

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN FOUR VOLUMES.)

DAVID TAYLOR,

Appellant,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES COMPANY,
a Corporation, TUNGSTEN PRODUCTS COMPANY,
a Corporation, MILL CITY DEVELOPMENT COM-
PANY, a Corporation, W. J. LORING, C. W POOLE,
R. NENZEL, H. J. MURRISH, L. A. FRIEDMAN,
C. H. JONES, G. K. HINCH, J. T. GOODIN, V. A.
TWIGG, J. C. HUNTINGTON and LENA J. FRIED-
MAN, Individually,

Appellees.

VOLUME I.
(Pages 1 to 352, Inclusive.)

Upon Appeal from the United States District Court for the
District of Nevada.

FILED
SEP 7 - 1922
F. D. MONCKTON,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN FOUR VOLUMES.)

DAVID TAYLOR,

Appellant,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES COMPANY,
a Corporation, TUNGSTEN PRODUCTS COMPANY,
a Corporation, MILL CITY DEVELOPMENT COM-
PANY, a Corporation, W. J. LORING, C. W POOLE,
R. NENZEL, H. J. MURRISH, L. A. FRIEDMAN,
C. H. JONES, G. K. HINCH, J. T. GOODIN, V. A.
TWIGG, J. C. HUNTINGTON and LENA J. FRIED-
MAN, Individually,

Appellees.

VOLUME I.
(Pages 1 to 352, Inclusive.)

Upon Appeal from the United States District Court for the
District of Nevada.



INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of David Taylor.....	1166
Answer of Defendant W. J. Loring.....	1324
Assignment of Errors	1469
Bond on Appeal	1454
Certificate of Clerk U. S. District Court to Transcript of Record.....	1464
Certificate of District Judge Settling Statement of Evidence	1123
Citation	1466
Complaint in Equity	1125

EXHIBITS:

Exhibit No. 1 Attached to Response of W. J. Loring to Order to Show Cause —Contract, Dated August 16, 1919, Between Nevada Humboldt Tungsten Mines Company, Tungsten Products Company and W. J. Loring.....	1196
Exhibit No. 1 Attached to Separate Answer of Nevada Humboldt Tungsten Mines Company et al. — Contract, Dated August 16, 1919, Between Nevada Humboldt Tungsten Mines Company,	

	Index.	Page.
EXHIBITS—Continued:		
Tungsten Products Company and W. J. Loring		1270
Exhibit No. 2 Attached to Answer of W. J. Loring — Ratification of Contract Dated August 16, 1919.....		1365
Exhibit No. 2 Attached to Response of W. J. Loring to Order to Show Cause — Ratification of Contract Dated August 16, 1919		1208
Exhibit No. 2 Attached to Separate Answer of Nevada Humboldt Tungsten Mines Company et al.—Ratification of Contract Dated August 16, 1919.....		1282
Exhibit No. 3 Attached to Answer of W. J. Loring — Ratification of Contract Dated August 16, 1919.....		1367
Exhibit No. 3 Attached to Response of W. J. Loring to Order to Show Cause — Ratification of Contract Dated August 16, 1919.....		1210
Exhibit No. 3 Attached to Separate Answer of Nevada Humboldt Tungsten Mines Company et al.—Ratification of Contract Dated August 16, 1919.....		1283
Exhibit No. 4 Attached to Answer of W. J. Loring—Resolution of Stockholders of Nevada Humboldt Tungsten Mines Company, Dated August 23, 1919....		1369
Exhibit No. 4 Attached to Response of W. J. Loring to Order to Show Cause—		

Index.	Page.
EXHIBITS—Continued:	
Resolution of Stockholders of Nevada Humboldt Tungsten Mines Company, Dated August 23, 1919.....	1211
Exhibit No. 4 Attached to Separate Answer of Nevada Humboldt Tungsten Mines Company et al.—Bill of Complaint in Cause Entitled David Taylor vs. C. W. Poole et al.	1285
Exhibit No. 5 Attached to Answer of W. J. Loring—Mortgage to Secure Purchase Price Dated August 23, 1919.....	1375
Exhibit No. 5 Attached to Response of W. J. Loring to Order to Show Cause— Mortgage to Secure Purchase Price Dated August 23, 1919.....	1217
Exhibit No. 5 Attached to Separate Answer of Nevada Humboldt Tungsten Mines Company et al. — Answer in Cause Entitled David Taylor vs. C. W. Poole et al.	1306
Exhibit No. 6 Attached to Answer of W. J. Loring—Bill of Complaint in Cause Entitled David Taylor vs. C. W. Poole et al.	1385
Exhibit No. 6 Attached to Separate Answer of Nevada Humboldt Tungsten Mines Company et al.—Reply in Cause En- titled David Taylor vs. C. W. Poole et al.	1318

	Index.	Page.
EXHIBITS—Continued:		
Exhibit "A" Attached to Complaint in Equity—Agreement, Dated January 16, 1919, Between David Taylor and Nevada Humboldt Tungsten Mines Company and Tungsten Products Company		1148
Exhibit "B" Attached to Complaint in Equity—Agreement, Dated January 16, 1919, Between David Taylor and Nevada Humboldt Tungsten Mines Company and Tungsten Products Company		1153
Exhibit "C" Attached to Complaint in Equity—Agreement, Dated April 2, 1919, Between David Taylor and L. A. Friedman et al.		1160
Plaintiff's Exhibit No. 1—Letter, Dated February 24, 1919, David Taylor to R. Nenzel		779
Plaintiff's Exhibit No. 2—Letter, Dated February 14, 1919, R. Nenzel to David Taylor		781
Plaintiff's Exhibit No. 3—Letter, Dated February 24, 1919, R. Nenzel to Con- solidated Ores Company		783
Plaintiff's Exhibit No. 4—Unsigned Letter Addressed to Nevada Humboldt Tung- sten Mines Company, Dated March 7, 1919		785

EXHIBITS—Continued:

Plaintiff's Exhibit No. 5—Letter, Dated March 7, 1919, David Taylor to C. W. Poole	786
Plaintiff's Exhibit No. 6—Letter, Dated March 10, 1919, R. Nenzel to David Taylor	787
Plaintiff's Exhibit No. 7—Letter, Dated March 11, 1919, David Taylor to Ne- vada Humboldt Tungsten Mines Com- pany	790
Plaintiff's Exhibit No. 8—Telegram, Dated March 11, 1919, R. Nenzel to David Taylor	793
Plaintiff's Exhibit No. 9—Letter, Dated March 21, 1919, R. Nenzel to David Taylor	794
Plaintiff's Exhibit No. 10 — Telegram, Dated March 25, 1919, L. A. Friedman to David Taylor	796
Plaintiff's Exhibit No. 11 — Telegram, Dated March 25, 1919, David Taylor to L. A. Friedman.....	797
Plaintiff's Exhibit No. 12—Letter, Dated March 25, 1919, David Taylor to L. A. Friedman	797
Plaintiff's Exhibit No. 13—Letter, Dated March 27, 1919, R. Nenzel to David Taylor	800
Plaintiff's Exhibit No. 14 — Telegram,	

Index.	Page.
EXHIBITS—Continued:	
Dated March 28, 1919, R. Nenzel to David Taylor	803
Plaintiff's Exhibit No. 15—Report on a Preliminary Investigation of the Nevada-Humboldt Tungsten Mine at Tungsten, Humboldt County, Nevada, by Howland Bancroft.....	1473
Plaintiff's Exhibit No. 16—Agreement Between David Taylor and L. A. Friedman et al., Dated April 2, 1919.....	803
Plaintiff's Exhibit No. 17—Agreement Between David Taylor and Nevada Humboldt Tungsten Mines Company et al., Dated June, 1919.....	813
Plaintiff's Exhibit No. 18—Memorandum of Agreement Between David Taylor, B. L. Thane and Howland Bancroft, Dated January 16, 1919.....	823
Plaintiff's Exhibit No. 19—Supplementary Report of Howland Bancroft, Dated June 2, 1919.....	824
Plaintiff's Exhibit No. 20—Howland Bancroft's Map Re Supplementary Report	1507
Plaintiff's Exhibit No. 21—Telegram, Dated May 22, 1919, David Taylor to B. L. Thane.....	827
Plaintiff's Exhibit No. 22—Telegram, Dated May 23, 1919, B. L. Thane to David Taylor	828

Index.

Page.

EXHIBITS—Continued:

Plaintiff's Exhibit No. 23 — Telegram, Dated May 23, 1919, David Taylor to Nevada Humboldt Tungsten Mines Company	829
Plaintiff's Exhibit No. 24 — Telegram, Dated May 7, 1919, David Taylor to L. A. Friedman.....	830
Plaintiff's Exhibit No. 25 — Telegram, Dated May 29, 1919, B. L. Thane to C. W. Poole.....	830
Plaintiff's Exhibit No. 26 — Telegram, Dated May 26, 1919, C. W. Poole to David Taylor	832
Plaintiff's Exhibit No. 27 — Account of David Taylor	833
Plaintiff's Exhibit No. 28 — Telegram, Dated August 10, 1919, David Taylor to W. J. Loring.....	834
Plaintiff's Exhibit No. 29 — Telegram, Dated August 11, 1919, W. J. Loring to David Taylor.....	835
Plaintiff's Exhibit No. 30—Memorandum of Agreement Between David Taylor, B. L. Thane and Howland Bancroft, Dated January 16, 1919.....	835
Plaintiff's Exhibit No. 31—Letter, Dated August 10, 1919, David Taylor to W. J. Loring	837
Plaintiff's Exhibit No. 32 — Unsigned Letter Addressed to Crucible Steel	

Index.	Page.
EXHIBITS—Continued:	
Company of America, Dated April 17, 1919	838
Plaintiff's Exhibit No. 33 — Unsigned Letter Addressed to Roy C. McKenna, Dated April 17, 1919.....	841
Plaintiff's Exhibit No. 34 — Telegram Dated January 21, 1919, C. W. Poole to David Taylor	844
Plaintiff's Exhibit No. 35—Letter, Dated April 9, 1919, R. Nenzel to David Taylor	845
Plaintiff's Exhibit No. 36—Introduced for Identification and Later Withdrawn..	848
Plaintiff's Exhibit No. 37—Notice of Pro- test, David Taylor to Nevada Hum- boldt Tungsten Mines Co. et al., Dated August 22, 1919.....	848
Plaintiff's Exhibit No. 38 — Demand of David Taylor on Nevada Humboldt Tungsten Mines Company et al., Dated September 26, 1919.....	850
Plaintiff's Exhibit No. 39 — Demand of David Taylor on L. A. Friedman et al., Dated September 26, 1919.....	852
Plaintiff's Exhibit No. 40—Statement of Stocks and Bonds Purchased and Sold by David Taylor.....	853
Plaintiff's Exhibit No. 41—Check, Dated May 28, 1919, F. M. Taylor to David Taylor	855

Index. Page.

EXHIBITS—Continued:

Plaintiff's Exhibit No. 42—Telegrams....	855
Plaintiff's Exhibit No. 43—Letters, David Taylor to New York Trust Co., May 12, 1919, and New York Trust Co. to David Taylor, May 15, 1919.....	857
Plaintiff's Exhibit No. 44—Letter Dated April 17, 1919, L. A. Friedman to David Taylor	859
Plaintiff's Exhibit No. 45—Envelope Containing Notice of Special Meeting of Stockholders of Nevada Humboldt Tungsten Mines Company.....	860
Plaintiff's Exhibit No. 46—Minutes of Special Meeting of Board of Directors of Nevada Humboldt Tungsten Mines Company	861
Plaintiff's Exhibit No. 49 — Telegram, Dated May 25, 1919, David Taylor to B. L. Thane, and Letter Dated May 26, 1919, C. W. Poole to B. L. Thane....	889
Plaintiff's Exhibit No. 50—Illustration of Mr. Nenzel's Testimony.....	890
Plaintiff's Exhibit No. 52 — Telegram, Dated March 28, 1919, David Taylor to Nevada Humboldt Tungsten Mines Company	891
Plaintiff's Exhibit No. 53—Agreement Between L. A. Friedman and J. T. Goodin and David Taylor, Dated December 15, 1919	891

Index.	Page.
EXHIBITS—Continued:	
Plaintiff's Exhibit "B-54"—Letter, Dated October 14, 1920, George B. Thatcher to T. J. Edwards.....	894
Defendants' Exhibit "A"—Letter, Dated May 14, 1919, B. L. Thane to W. S. Bayless	895
Defendants' Exhibit "A-1"—Unsigned Agreement of Stockholders.....	935
Defendants' Exhibit "A-2"—Bill of Com- plaint in Case No. 2263.....	936
Defendants' Exhibit "A-3"—Answer in Case No. 2263.....	958
Defendants' Exhibit "A-4"—Reply in Case No. 2263.....	970
Defendants' Exhibit "A-5"—Check for \$1,000, Dated December 15, 1919, Ne- vada Humboldt Tungsten Mines Com- pany to Norcross, Thatcher and Woodburn	976
Defendants' Exhibit "A-6"—Receipt Voucher for \$1,000.....	977
Defendants' Exhibit "A-7"—Check for \$6,334.04, Dated February 9, 1920, First National Bank of Lovelock to Gibbons, French & Stoddard	978
Defendants' Exhibit "A-8"—Check for \$6,334.04, Dated October 7, 1919, Ne- vada Humboldt Tungsten Mines Com- pany to First National Bank of Lovelock	979

Index.	Page.
EXHIBITS—Continued:	
Defendants' Exhibit "A-9" — Receipt Voucher for \$6,334.04.....	979
Defendant's Exhibit "A-10"—Appoint- ment of J. T. Goodin as Trustee, Dated June 23, 1919.....	980
Defendants' Exhibit "A-11"—Agreement of Creditors Extending Time, Dated June 9, 1919	988
Defendants' Exhibit "A-12" — Contract Between Nevada Humboldt Tungsten Mines Company, Tungsten Products Company and W. J. Loring, Dated August 16, 1919.....	991
Defendants' Exhibit "A-13"—Minutes of Special Meeting of Board of Directors of Tungsten Products Company, Dated August 16, 1919.....	1014
Defendants' Exhibit "A-14"—Minutes of Special Meeting of the Stockholders of Tungsten Products Company, Dated August 23, 1919.....	1032
Defendants' Exhibit "A-15"—Minutes of Special Meeting of Board of Directors of Tungsten Products Company, Dated August 23, 1919.....	1040
Defendants' Exhibit "A-16"—Minutes of Special Meeting of Board of Directors of Nevada Humboldt Tungsten Mines Company, Dated August 23, 1919.....	1044
Defendants' Exhibit "A-17"—Minutes of Special Meeting of Stockholders of	

	Index.	Page.
EXHIBITS—Continued:		
Nevada Humboldt Tungsten Mines Company, Dated August 23, 1919...		1048
Defendants' Exhibit "A-18"—Waiver of Notice of Board of Directors of Nevada Humboldt Tungsten Mines Company, Dated August 23, 1919....		1056
Defendants' Exhibit "A-19"—Minutes of Special Meeting of Stockholders of Nevada Humboldt Tungsten Mines Company, Dated April 19, 1920.....		1060
Defendants' Exhibit "A-20"—Mining Deed, Dated August 23, 1919, Nevada Humboldt Tungsten Mines Company to W. J. Loring.....		1065
Defendants' Exhibit "A-21"—Deed, Dated August 23, 1919, Tungsten Products Company to W. J. Loring.....		1070
Defendants' Exhibit "A-22"—Deed, Dated August 23, 1919, Nevada Humboldt Tungsten Mines Company to W. J. Loring		1074
Defendants' Exhibit "A-23"—Assignment, Dated August 23, 1919, Nevada Hum- boldt Tungsten Mines Company and Tungsten Products Company to W. J. Loring		1078
Defendants' Exhibit "A-24"—Bill of Sale, Dated August 23, 1919, Nevada Hum- boldt Tungsten Mines Company to W. J. Loring.....		1082
Defendants' Exhibit "A-25"—Mortgage to		

Index.	Page.
EXHIBITS—Continued:	
Secure Purchase Price, Dated August 23, 1919	1088
Defendants' Exhibit "A-26"—By-laws of Nevada Humboldt Tungsten Mines Company	1099
Defendants' Exhibit "A-27" — Letter, Dated July 21, 1919, L. A. Friedman et al. to W. J. Loring.....	1110
Defendants' Exhibit "A-28" — Letter, Dated August 9, 1919, L. A. Friedman et al. to W. J. Loring.....	1113
Defendants' Exhibit "A-29" — Telegram, Dated August 19, 1919, Booth B. Goodman to W. J. Loring.....	1116
Defendants' Exhibit "A-30" — Telegram, Dated August 19, 1919, Booth B. Goodman to John F. Davis.....	1117
Defendants' Exhibit "A-31"—Assignment, Dated August 16, 1919, Rochester Mines Company to W. J. Loring...	1118
Defendants' Exhibit "A-32"—Assignment, Dated August 16, 1919, Rochester Combined Mines Company to W. J. Loring.	1119
Defendants' Exhibit "A-33"—Assignment, Dated August 23, 1919, Nevada Humboldt Tungsten Mines Company to W. J. Loring	1120
Defendants' Exhibit "A-34" — Statement of Indebtedness, Dated September 25,	

	Index.	Page.
EXHIBITS—Continued:		
1920, J. T. Goodin to Cooke, Wheeler & Davis		1122
Defendants' Exhibit "A-35"—Sheets of Quotations from New York Stock Exchange		1123
Defendants' Exhibit "B"—Pencil Memo- randa of David Taylor.....		897
Defendants' Exhibit "C"—Letter, Dated May 20, 1919, David Taylor to R. Nenzel		900
Defendants' Exhibit "D"—Telegram, Dated May 25, 1919, David Taylor to B. L. Thane.....		902
Defendants' Exhibit "E"—Telegram, Dated May 29, 1919, B. L. Thane to David Taylor		903
Defendants' Exhibit "F"—Account of David Taylor With New York Trust Company, Dated May 31, 1919.....		905
Defendants' Exhibit "G"—Telegram, Dated May 14, 1919, David Taylor to Howland Bancroft		906
Defendants' Exhibit "H"—Telegram, Dated May 15, 1919, Howland Ban- croft to David Taylor		907
Defendants' Exhibit "I"—Telegram, Dated May 22, 1919, Howland Ban- croft to David Taylor.....		908
Defendants' Exhibit "J"—Telegrams....		909

Index. Page.

EXHIBITS—Continued:

Defendants' Exhibit "K" — Unsigned Letter, Dated May 20, 1919, to Howland Bancroft	910
Defendants' Exhibit "L" — Telegram, Dated May 30, 1919, David Taylor to B. L. Thane.....	911
Defendants' Exhibit "M" — Telegram Dated June 2, 1919, Howland Bancroft to David Taylor	912
Defendants' Exhibit "N" — Telegram, Dated May 14, 1919, B. L. Thane to Howland Bancroft	913
Defendants' Exhibit "O" — Telegram, Dated April 3, 1919, David Taylor to Howland Bancroft	915
Defendants' Exhibit "P" — Unsigned Letter, Dated May 28, 1919, to C. W. Poole	916
Defendants' Exhibit "Q" — Telegram, Dated May 26, 1919, David Taylor to C. W. Poole.....	919
Defendants' Exhibit "R" — Telegram, Dated May 25, 1919, David Taylor to Nevada Humboldt Tungsten Mines Company	919
Defendants' Exhibit "S" — Telegram, Dated May 24, 1919, R. Nenzel to David Taylor	921
Defendants' Exhibit "T" — Telegram, Dated May 26, 1919, Nevada Humboldt	

Index.	Page.
EXHIBITS—Continued:	
Tungsten Mines Company to David Taylor	922
Defendants' Exhibit "U"—Prospectus, Headed Memorandum No. 3.....	923
Defendants' Exhibit "V"—Proposed Capitalization	928
Defendants' Exhibit "W"—Telegram, Dated January 21, 1919, C. W. Poole to David Taylor.....	929
Defendants' Exhibit "X"—Letter, Dated January 24, 1919, C. W. Poole to David Taylor	930
Defendants' Exhibit "Y"—Map of "S. P." Vein, Looking N. W.	1509
Defendants' Exhibit "Z"—Estimated Debt of Tungsten Company.....	933
Judgment and Decree	1437
Minutes of Court—April 26, 1920—Order Continuing Hearing on Restraining Order to May 10, 1920	1174
Minutes of Court—April 27, 1920—Order Continuing Hearing on Restraining Order to May 12, 1920	1175
Minutes of Court—May 11, 1920—Order Continuing Hearing on Order to Show Cause to May 15, 1920.....	1177
Minutes of Court—October 15, 1921—Order Continuing Hearing of Arguments on Petition for Rehearing to October 25, 1921....	1444

Index.	Page.
Minutes of Court—November 8, 1921—Order Denying Plaintiff's Petition for Rehearing	1446
Minutes of Court—March 6, 1922—Order Continuing Hearing on Settlement of Statement of Facts	1448
Minutes of Court—April 3, 1922—Order Continuing Hearing on Motion to Settle Statement of Facts.....	1449
Minutes of Court—April 10, 1922—Order Continuing Hearing of Statement of Facts...	1449
Minutes of Court—May 25, 1922—Order Continuing Hearing of Statement of Evidence to June 9, 1922.....	1461
Names and Addresses of Attorneys of Record..	1124
Opinion	1407
Order Continuing Hearing of Arguments on Petition for Rehearing to October 25, 1921	1444
Order Continuing Hearing of Statement of Facts	1449
Order Continuing Hearing on Motion to Settle Statement of Facts.....	1449
Order Continuing Hearing on Order to Show Cause to May 15, 1920.....	1177
Order Continuing Hearing on Restraining Order to May 10, 1920.....	1174
Order Continuing Hearing on Restraining Order to May 12, 1920.....	1175
Order Continuing Hearing on Settlement of Statement of Facts.....	1448

Index.	Page.
Order Denying Plaintiff's Petition for Re-hearing	1446
Order Extending Time to and Including June 29, 1922, to File Record and Docket Cause.	1462
Order Extending Time to and Including July 29, 1922, to File Record and Docket Cause.	1463
Order to Show Cause.	1441
Order to Show Cause and Restraining Order. .	1170
Petition for Appeal and Order Allowing Same.	1452
Petition for Rehearing	1440
Praecipe for Transcript of Record.	1457
Response of W. J. Loring to Order to Show Cause	1178
Separate Answer of Nevada Humboldt Tungsten Mines Company et al.	1228
Statement of Evidence.	1
Stipulation Continuing Hearing Argument on Rehearing	1443
Stipulation Continuing Hearing on Proposed Statement of Facts, Dated November 2, 1921	1447
Stipulation Continuing Hearing on Proposed Statement of Facts, Dated April 20, 1922. .	1450
Stipulation Continuing Hearing on Proposed Statement of Facts.	1459
Stipulation Giving Defendants Time to Answer	1175
Stipulation Submitting Plaintiff's Petition for Rehearing	1445
Subpoena in Equity.	1167

Index.

Page.

TESTIMONY ON BEHALF OF PLAIN-
TIFF:

BANCROFT, HOWLAND	228
Cross-examination	250
Redirect Examination	278
Recross-examination	279
BAYLESS, W. S.	126
Cross-examination	133
Redirect Examination	140
JACKSON, JOHN G.	410
Cross-examination	428
In Rebuttal	746
Cross-examination	748
Recalled	775
LORING, W. J.	767
MORRIN, B. H.	768
NENZEL, RUDOLPH	458
TAYLOR, DAVID	20
Cross-examination	100
Cross-examination—Resumed	280
Redirect Examination	324
Cross-examination	339
Redirect Examination	351
Recross-examination	356
Cross-examination	372
Redirect Examination	386
Recross-examination	389
Redirect Examination	394
Recross-examination	398
Recalled	432
Cross-examination	444
In Rebuttal	741

	Index.	Page.
TESTIMONY ON BEHALF OF DEFEND-		
ANTS:		
ADAMS, EDSON F.		403
FRIEDMAN, L. A.		681
Cross-examination		687
GOODIN, J. T.		661
Cross-examination		677
Redirect Examination		678
LORING, W. J.		697
Cross-examination		712
Redirect Examination		714
Cross-examination		722
MURRISH, H. J.		629
Cross-examination		648
In Rebuttal		769
NENZEL, RUDOLPH		601
Cross-examination		613
Redirect Examination		624
Recross-examination		625
POOLE, C. W.		461
Cross-examination		529
Recalled		688
THATCHER, GEORGE B. (In Rebuttal)		731

In the District Court of the United States, in and
for the District of Nevada.

Honorable E. S. FARRINGTON, Judge.

No. B.-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES
COMPANY, a Corporation, et al.,

Defendants.

Statement of Evidence.

VOLUME I.

APPEARANCES:

Mr. GEORGE B. THATCHER, for Plaintiff.

Mr. H. R. COOKE, for Defendants, Nevada
Humboldt Tungsten Mines Company, et al.

Mr. JOHN F. DAVIS and

Mr. CHARLES R. WHEELER, for Defendant,
W. J. Loring.

Lodged in clerk's office Feb. 18, 1922.

E. O. PATTERSON,

Clerk.

By O. E. Benham,

Deputy.

Settled and filed June 9, 1922.

E. O. PATTERSON,

Clerk.

INDEX.

VOLUME 1.

	Direct	Cross	Redirect	Recross
TAYLOR, DAVID	9	72		
		105		
		151	245	256
			264	268
			270	280
			291	293
TAYLOR, DAVID (Recalled)...	326	336	297	300
TAYLOR, DAVID (Rebuttal)				
Vol. 2	564			
BAYLESS, W. S.....	92	97	102	
BANCROFT, HOWLAND	172	188	210	210
ADAMS, EDSON F. (Called by				
Defts.)	304			
JACKSON, JOHN G.....	310	323		
JACKSON, JOHN G. (Rebuttal)				
Vol. 2	568	569		
JACKSON, JOHN G. (Recalled)				
Vol. 2	591			
NENZEL, RUDOLPH	343			

VOLUME 2.

POOLE, C. W.....	348	400		
POOLE, C. W. (Recalled).....	522			
NENZEL, RUDOLPH	455	464	473	474
MURRISH, H. J.....	477	492		
MURRISH, H. J. (Rebuttal)....	586			
GOODIN, J. T.....	501	513	514	
FRIEDMAN, L. A.....	517	521		
LORING, W. J.....	530	541	542	
	546	549		
LORING, W. J. (Recalled).....	584			
THATCHER, GEORGE B. (Re-				
buttall)	557			
MORRIN, B. H.....	585			
RULING ON MOTION TO DIS-				
MISS	6			

[1*]

*Page-number appearing at foot of page of original certified Transcript of Record.

EXHIBITS.

PLAINTIFF'S	Page
1—Letter. David Taylor to R. Nenzel. Feb. 24, 1919	13
2—Letter. R. Nenzel to David Taylor, Feb. 24, 1919	16
3—Letter. R. Nenzel to Consolidated Ores Co., Feb. 24, 1919.....	18
4—Letter. David Taylor to Nevada Humboldt Tungsten Mines Co. March 7, 1919.....	20
5—Letter. David Taylor to C. W. Poole, March 7, 1919.....	20
6—Letter. R. Nenzel to David Taylor, March 10, 1919.....	21
7—Letter. David Taylor to Nevada Humboldt Tungsten Mines Co., March 11, 1919.....	23
8—Telegram. R. Nenzel to David Taylor, March 11, 1919.....	23
9—Letter.—R. Nenzel to David Taylor, March 21, 1919.....	24
10—Telegram. L. A. Friedman to David Tay- lor, March 25, 1919.....	25
11—Telegram. David Taylor to L. A. Fried- man, March 25, 1919.....	26
12—Letter. David Taylor to L. A. Friedman, Pres., March 25, 1919.....	27
13—Letter. R. Nenzel to David Taylor, March 27, 1919.....	27
14—Telegram. R. Nenzel to David Taylor, March 28, 1919.....	28
15—Bancroft's Report and Plate 5..	35

	Page
16—Agreement between David Taylor and L. A. Friedman, et al., April 2, 1919.....	39
17—Agreement between David Taylor and Ne- vada Humboldt Tungsten Mines Co. et al., June—1919	58
18—Agreement between David Taylor, B. L. Thane and Howland Bancroft, Jan. 16, 1919.....	175
19—Bancroft's Supplemental Report, June 2, 1919.....	183
20—Map. Plate 5—A.....	185
21—Telegram. David Taylor to B. L. Thane, May 22, 1919.....	252
22.—Telegram. B. L. Thane to David Taylor, May 23, 1919.....	252
23—Telegram. David Taylor to Nevada Hum- boldt Tungsten Mines Co., May 23, 1919...	253
24.—Telegram. David Taylor to L. A. Fried- man, May 7, 1919.....	253
25—Telegram. B. L. Thane to C. W. Poole, May 29, 1919.....	53
26—Telegram. C. W. Poole to David Taylor, May 26, 1919.....	254
27.—Account of David Taylor.....	256
28—Telegram. David Taylor to W. J. Loring, August 10, 1919.....	267
29.—Telegram. W. J. Loring to David Taylor, August 11, 1919.....	267
30—Memorandum of Agreement between Tay- lor, Thane and Bancroft with Release of B. L. Thane, Sept. 11, 20.....	268

	Page
31—Letter. David Taylor to W. J. Loring, August 10, 1919.....	270
32—Letter. David Taylor to Crucible Steel Co., Apr. 17, 1919.....	271
33—Letter. David Taylor to Vanadium Steel Co., Apr. 17, 1919.....	272
34—Telegram. C. W. Poole to David Taylor, Jan. 21, 1919.....	273
35—Letter. R. Nenzel to David Taylor, Apr. 9, 1919.....	276-347
36—Letter. Marked for identification and Withdrawn	276-345
37—Notice of Protest. David Taylor to Ne- vada Humboldt Tungsten Mines Co., Aug 22, 1919.....	277
38—Demand of David Taylor on Nevada Hum- boldt Tungsten Mines Co. et al., Sept. 26, 1919.....	280
39—Demand of David Taylor on L. A. Fried- man, et al., Sep. 26, 1919.....	280
40—Statement of Stocks and Bonds purchased and sold by David Taylor.....	332
41—Check. F. M. Taylor to David Taylor, May 28, 1919.....	332
42—Telegrams. David Taylor to Wells Fargo Nev. Natl. Bank, May 27, 1919, and Wells Fargo Nev. Natl. Bank to David Taylor, May 28, 1919.....	333

	Page
43—Letters. David Taylor to New York Trust Co., May 12, 1919, and New York Trust Co. to David Taylor, May 15, 1919.....	334
44—Letter. L. A. Friedman to David Taylor, Apr. 17, 1919.....	336
45—Envelope containing Notice of Special Meeting of Stockholders of Nevada Humboldt Tungsten Mines Co.....	342
46—Minutes of Special Meeting of Stockholders of Nevada Humboldt Tungsten Mines Co..	344
47—(Rejected.) Letter. L. A. Friedman to David Taylor, Jan. 19, 1919.....	346
48—Contract between L. A. Friedman and C. W. Poole, Feb. 20, 1918.....	411
49—Telegram. David Taylor to B. L. Thane, May 25, 1919, and Letter, C. W. Poole to B. L. Thane, May 26, 1919.....	454
50—Diagram by R. Nenzel.....	474
51—Letter. W. J. Loring to Howland Bancroft, Sept. 25, 1919.....	550-581
52—Telegram. David Taylor to Nevada Humboldt Tungsten Mines Co., March 28, 1919.	567
53—Agreement. L. A. Friedman and J. T. Goodin to pay David Taylor \$7334.04. December 15, 1919.....	592
DEFENDANTS'	Page
"A"—Letter. B. L. Thane to W. S. Bayless, May 14, 1919.....	102
	167
"B"—Pencil Memoranda of David Taylor....	117

"C"—Letter. David Taylor to R. Nenzel, May 20, 1919.....	134
"D"—Telegram. David Taylor to B. L. Thane, May 25, 1919.....	146
"E"—Telegram. B. L. Thane to David Tay- lor, May 29, 1919.....	148
"F"—Account of David Taylor with New York Trust Co., May 31, 1919.....	152
"G"—Telegram. David Taylor to Howland Bancroft, May 14, 1919.....	160
"H"—Telegram. Howland Bancroft to David Taylor, May 15, 1919.....	160
"I"—Telegram. Howland Bancroft to David Taylor, May 22, 1919.....	161
"J"—Telegram. Howland Bancroft to David Taylor, May 21, 1919.....	161
"K"—Letter. David Taylor to Howland Ban- croft, May 20, 1919.....	162
"L"—Telegram. David Taylor to B. L. Thane, May 30, 1919.....	164
"M"—Telegram. Howland Bancroft to David Taylor, June 2, 1919.....	165
"N"—Telegram. B. L. Thane to Howland Bancroft, May 14, 1919.....	166
"O"—Telegram...David Taylor to Howland Bancroft, April 3, 1919.....	205
"P"—Letter. David Taylor to C. W. Poole, May 28, 1919.....	242
"Q"—Telegram. David Taylor to C. W. Poole, May 26, 1919.....	244

	Page
"R"—Telegram. David Taylor to Nevada Humboldt Tungsten Mines Co., May 25, 1919	244
"S"—Telegram. R. Nenzel to David Taylor, May 24, 1919.....	244
"T"—Telegram. Nevada Humboldt Tungsten Mines Co. to David Taylor, May 26, 1919..	245
"U"—Prospectus. H e a d e d "Memorandum No. "3.".....	288
"V"—"Proposed Capitalization".....	288
"W"—Telegram. C. W. Poole to David Taylor, Jan. 21, 1919.....	358
[3]	
"X"—Letter. C. W. Poole to David Taylor, Jan. 24, 1919.....	358
"Y"—Mine Map.....	370
"Z"—Memoranda in re Negotiations.....	483
"A-1"—Memoranda in re Agreement.....	487
"A-2"—Complaint in Case No. 2263.....	499
"A-3"—Answer in Case No. 2263.....	500
"A-4"—Reply in Case No. 2263.....	500
"A-5"—Check for \$1000, Nevada Humboldt Tungsten Mines Co. to Norcross, Thatcher & Woodburn, Dec. 15, 1919.....	509
"A-6"—Receipt Voucher for \$1000.....	509
"A-7"—Check for \$6334.04; 1st Natl. Bank of Lovelock to Gibbons, French & Stoddard, Feb. 9, 1920.....	510
"A-8"—Check for \$6334.04; Nevada Humboldt Tungsten Mines Co. to 1st Natl. Bank of Lovelock, Feb. 7, 1920.....	509

	Page
"A-9"—Receipt Voucher for \$6334.04.....	510
"A-10"—Appointment of J. T. Gooding, Trustee, June 23, 1919.....	513
"A-11"—Agreement of Creditors Extending Time, June 9, 1919.....	513
"A-12"—Contract Between Nevada Humboldt Tungsten Mines Co., Tungsten Products Co. and W. J. Loring, Aug. 16, 1919.....	516
"A-13"—Minutes Special Meeting Directors Tungsten Products Co., Aug. 16, 1919.....	525
"A-14"—Minutes Special Meeting Stockholders Tungsten Products Co., Aug. 16, 1919	525
"A-15"—Minutes Special Meeting Board Directors Tungsten Products Co., Aug. 23, 1919	525
"A-16"—Minutes Special Meeting Board Directors Nevada Humboldt Tungsten Mines Co., Aug. 23, 1919.....	525
"A-17"—Minutes Special Meeting Stockholders Nevada Humboldt Tungsten Mines Co., Aug. 23, 1919.....	526
"A-18"—Resolution Board of Directors Nevada Humboldt Tungsten Mines Co., Aug. 23, 1919.....	526
"A-19"—Minutes Special Meeting Stockholders Nevada Humboldt Tungsten Mines Co., April 19, 1920.....	526
"A-20"—Mining Deed Between Nevada Humboldt Tungsten Mines Co., and W. J. Loring, Aug. 23, 1919.....	528

	Page
“A-21”—Deed. Tungsten Products Co. to W. J. Loring, Aug. 23, 1919.....	528
“A-22”—Deed. Nevada Humboldt Tungsten Mines Co., to W. J. Loring, Aug. 23, 1919.	528
“A-23”— <i>Deed</i> . Nevada Humboldt Tungsten Mines Co. to W. J. Loring, Aug. 23, 1919..	528
“A-24”—Bill of Sale. Nevada Humboldt Tungsten Mines Co. to W. J. Loring, Aug. 23, 1919	529
“A-25”—Mortgage to Secure Purchase Price, Aug. 23, 1919.....	529
“A-26”—Book of By-Laws. Nevada Hum- boldt Tungsten Mines Co.....	529
“A-27”—Letter. W. J. Loring to L. A. Fried- man, July 21, 1919.....	534
“A-28”—Letter. W. J. Loring to L. A. Fried- man, Aug. 9, 1919.....	535
“A-29”—Telegram. Booth B. Goodman to W. J. Loring Aug. 19, 1919.....	537
“A-30”—Telegram. Booth B. Goodman to Judge John F. Davis, Aug. 19, 1919.....	537
“A-31”—Assignment. Rochester Mines Co. to W. J. Loring, Aug. 6, 1919.....	547
“A-32”—Assignment. Rochester Combined Mines Co. to W. J. Loring, Aug. 16, 1919..	547
“A-33”—Deed to Power Contract. Aug. 23, 1919	553
“A-34”—Letter. J. T. Goodin to Cooke, Wheeler & Davis, Sept. 25/20.....	593
“A-35”—Sheets. New York Stock Exchange.	593

In the District Court of the United States, in and
for the District of Nevada.

No. B-7.

DAVID TAYLOR,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES
COMPANY, a Corporation, TUNGSTEN
PRODUCTS COMPANY, a Corporation,
HILL CITY DEVELOPMENT COMPANY,
a Corporation, W. J. LORING, C. W.
POOLE, R. NENZEL, H. J. MURRISH, L.
A. FRIEDMAN, C. H. JONES, G. K.
HINCH, J. T. GOODIN, V. A. TWIGG, J.
C. HUNTINGTON and LENA J. FRIED-
MAN, Individually,

Defendants.

This case came on regularly for trial in the above-entitled court on Tuesday, September 14th, 1920, at 10 o'clock A. M., before the Honorable E. S. Farrington, Judge of said court;

Mr. George B. Thatcher, appearing as attorney for plaintiff; Mr. H. R. Cooke, appearing as attorney for defendants, Nevada Humboldt Tungsten Mines Company, et al., and Mr. John F. Davis and Mr. Charles S. Wheeler, appearing as attorneys for defendant W. J. Loring;

Whereupon the following proceedings were had and testimony introduced: [5—1]

The COURT.—You may proceed, Mr. Thatcher.

Mr. COOKE.—If the Court please, I wish to amend the separate answer of the defendants Nevada Humboldt Tungsten Mines Company, and others, on page 3; counsel has kindly consented that the matter may be presented without notice.

The COURT.—In which case?

Mr. COOKE.—It is in B-7. Page 3, Line 22, by striking out the words “except Poole, Nenzel and L. A. Friedman.” It is possibly one of those things that occurs in the drafting of pleadings as voluminous as these, and was included there rather by inadvertence than design. My witnesses tell me that is not the fact, and I desire to amend to conform to what they state is the fact. It is in response to the allegation of the complaint that the matters alleged in that particular paragraph, namely, the conditions of the property, were peculiarly within the knowledge of certain defendants; and in the answer they deny that it was within the knowledge of any of the defendants excepting these three; but I find on further examination of the witnesses that they have no peculiar knowledge or information of the subject matter embraced in the allegations to which this answer is responsive; hence we desire to have that corrected, and those words stricken out.

The COURT.—Any objection?

Mr. THATCHER.—Well, I don't know, if your Honor please. I based some of my proof in line of my case, on the proposition that it was admitted that Poole, Nenzel and Friedman had knowledge of the mine, and that the mine developments were

within the knowledge, the general knowledge or peculiar knowledge, of these three defendants; but of course if it not the truth it necessarily will have to be amended. [6—2]

Mr. COOKE.—It is not the truth.

The COURT.—The amendment will be allowed.

Mr. THATCHER.—Now what is the understanding, Mr. Cooke?

Mr. COOKE.—That the words, “except Poole, Nenzel and L. A. Friedman,” lines 22 and 23, page 3 of the answer, be stricken.

Mr. THATCHER.—With reference to the trial of the cases, may we stipulate that both cases be tried together; that the case of David Taylor vs. Nevada Humboldt Tungsten Mines Company, Tungsten Products Company, Mill City Development Company, W. J. Loring, C. W. Poole, R. Nenzel, H. R. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman.

The COURT.—That is B-7.

Mr. THATCHER.—That that case be tried with the case of David Taylor vs. C. W. Poole, R. Nenzel, M. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington, and Lena J. Friedman, No. 2263.

Mr. WHEELER.—That is a stipulation into which we cannot enter, as we consider our interest is entirely separate and distinct, and would be prejudiced by such a proceeding. Perhaps it would be well to call your Honor’s attention at this time to the situation of the record. There are two

suits brought here, B-1 and B-7, to which Mr. Loring is a party defendant. B-1 is a suit on which it is sought to set aside and cancel an alleged cloud upon the title of the corporation, Nevada Humboldt Tungsten Mines Company, certain transactions in the shape of contracts and deeds.

Mr. THATCHER.—I will say if counsel does not desire to stipulate, there is no use in arguing the question.

The COURT.—I don't see how those cases can be tried together unless you consent. [7—3]

Mr. THATCHER.—I think they can be tried together, but if counsel objects.

The COURT.—If there is an objection, I will not make an order that they be tried together, nor those two.

Mr. WHEELER.—That still leaves the question whether the other two should be tried together, and what I was about to say will have its bearing there, as though the other matter were before you.

The COURT.—Are you interested in the other two?

Mr. THATCHER.—I don't ask that the other two be tried together.

The COURT.—I understand from your objection, that in one of these cases you are not interested?

Mr. WHEELER.—One is an action at law for damages, to which we are not a party. Counsel has asked that we stipulate with regard to that, and we will not consent. So far as the other two cases are concerned, the question now before your

Honor is as to the order in which they should be tried.

(Argument by Mr. Wheeler.)

Mr. WHEELER.—The last case, B-7, should be tried first, in order that the injunction and temporary restraining order may be set aside, and that the corporation may act for our benefit, for use in case B-1, and that, I submit, should be the order of the trial.

Mr. THATCHER.—Well, that is the order of trial that I would like to have your Honor hear the cases.

The COURT.—Then you are agreed?

Mr. THATCHER.—Yes, we are agreed.

The COURT.—Then case B-7 will be tried first. You may proceed.

Mr. WHEELER.—At this stage of the proceedings, I call your Honor's attention to the fact that in the answer of the defendant Loring, the allegation is made that the bill is without equity, and that it is moved that the action be dismissed. Ordinarily a technical objection of this sort, seeming so at least, an objection at law, would very properly be relegated to a later decision in the case, there to be passed upon; but I respectfully submit that the question is one which should now be passed upon, and if we are correct, that Mr. Loring should be hence dismissed, and not [8—4] compelled to wade through a long trial, and its attendant costs and expenses; if it is a palpable proposition, perfectly evident and perfectly clear that this action cannot be maintained,

then the legal objection, I submit, should have its full force and effect, and the action should not proceed further.

(Argument by Mr. Wheeler.)

Mr. COOKE.—If your Honor please, in behalf of the defendants represented by myself, the Nevada Humboldt Tungsten Mines Company and other defendants, except Mr. Loring, a notice of motion was made and filed before the hearing on the show cause order some time ago, for a dismissal of the bill for want of equity, in which these propositions urged by Mr. Wheeler, together with others, were then urged upon the Court. A motion was made pursuant to that notice, and submitted, and I would like the record to show that we renew the motion at this time, and ask that the motion be considered in connection with the motion made by Mr. Wheeler on behalf of Mr. Loring. We think that all the reasons advanced by Mr. Wheeler are equally applicable to the defendants represented by us, with some slight variations, which are perhaps not material. Upon the show cause hearing we urged upon your Honor the question of want of mutuality, the want of possibility of performance of the contract, and those matters are renewed now. I don't think it is necessary for me to take up any time by way of attempted enlargement upon what Mr. Wheeler has said as to those features, because I believe it is quite sufficient for the purpose; but I would like to have the record show at this time, in pursuance of the notice heretofore given, we renew the motion for

a dismissal of the defendants, aside from Mr. Loring, and ask that the same reasons be applicable to our case as Mr. Wheeler has advanced on behalf of Mr. Loring. [9—5]

(Argument.)

The COURT.—I will declare a recess now, and will dispose of the motion at the end of the recess.

(Recess at 11:40 A. M. until 1:30 P. M.)

AFTER RECESS. 1:30 P. M.

The COURT.—I have examined the contract, gentlemen, and it seems to me that Taylor's obligation is to secure by borrowing for the three defendant corporations a sum of money sufficient to liquidate their indebtedness, estimated at \$220,000. The undertaking of the other parties to this contract is to transfer and deliver to Taylor a certain percentage of capital stock held by them in the three corporations named as defendants in the present case, when he, Taylor, has secured the sum of money necessary to liquidate the indebtedness of the three corporations. The consent of the three companies to receive or consummate the loan, or to issue preferred stock as security for the loan, is in no manner made a condition precedent to the delivery of the stock. This is clearly indicated in the last clause of paragraph 2, where it is stipulated that "a deposit of the amount necessary to liquidate the indebtedness as herein provided in the Wells Fargo Nevada National Bank shall be sufficient evidence of the conditions herein for the

transfer and delivery of the stock as herein provided."

Paragraph E has been referred to as authority for the proposition that Taylor should not only secure a sufficient sum of money to liquidate the indebtedness of the company, but the loan to the company should be actually consummated before he would be entitled to a delivery of the stock. [10—6]

An examination of that Paragraph shows that it refers to the contract of which it forms a part, Exhibit "C," and also to the option of January 16, 1919, in which Taylor was granted a right to purchase all of the stock issued by the defendant corporations, then owned by the individual defendants in the present suit, provided the option was exercised prior to July 16, 1919, Exhibit "B."

In the same paragraph it is also provided that both agreements, to wit, Exhibit "B" and Exhibit "C," shall expire June 16, 1919, and that they, that is, Exhibit "B" and Exhibit "C," shall be of no further force or effect if Taylor "shall not have negotiated the loan and secured the money provided in Paragraph 1."

The use of the term "negotiated the loan" instead of "loans" followed by "secured the money," is significant, and suggests that the parties may have had in mind a borrowing by Taylor rather than the loan to each company, of money sufficient to liquidate its indebtedness.

The provision in the contract that a deposit in the Wells Fargo Nevada National Bank of the

money necessary to liquidate the debts of the corporations would be sufficient evidence of performance for the transfer of the stock, could have been inspired by no other thought than to protect Taylor against the very interpretation of the contract now insisted upon by counsel. It is the parties of the second part who covenant and agree to turn over the stock to Taylor. They control the stock and they also control the corporations. If plaintiff's performance is not full performance within the meaning of the contract, until it is supplemented by acceptance and consummation of the loans by each of the corporations, then it would appear that Mr. Taylor has incurred an obligation which cannot be performed without the co-operation and assistance of the individual defendants themselves. This is [11—7] unreasonable, and I think not a fair interpretation of the contract, Exhibit "C."

In deciding this motion I am assuming that plaintiff has fully performed the contract, as he has alleged in his complaint. In my judgment, the raising by Taylor of a sufficient amount of money to satisfy the indebtedness of the three corporations, and the delivery of the specified amount of stock to him, constitute an agreement severable from the remainder of the contract, and susceptible of specific performance; therefore I overrule the motion.

Mr. COOKE.—Will the Court allow us an exception.

Mr. WHEELER.—Both parties defendant.

Mr. THATCHER.—Call Mr. Taylor. [12—8]

Testimony of David Taylor in His Own Behalf.

DAVID TAYLOR, the plaintiff, called as a witness in his own behalf, after being sworn, testified as follows:

Direct Examination by Mr. THATCHER.

Question.—What is your name?

Answer.—David Taylor.

Q. Where do you reside, Mr. Taylor?

A. Denver.

Q. What state? A. Denver, Colorado.

Q. Are you a citizen of Colorado? A. I am.

Q. How long have you been a citizen and resident of Colorado? A. Since 1916.

Q. Do you know the Nevada Humboldt Tungsten Mines Company? A. I do.

Q. Are you familiar generally with its property?

A. Yes.

Q. Have you been to the property of the Nevada Humboldt Tungsten Mines Company?

A. I have.

Q. Where is the property situated?

A. Seven or eight miles off the main line of the Southern Pacific at Mill City, Nevada.

Q. When did you first become acquainted with the Nevada Humboldt Tungsten Mines Company and its subsidiary, and their mining property?

A. The beginning of January 1919.

(Testimony of David Taylor.)

Q. Under what circumstances did you become acquainted with them?

A. They were brought to my attention by Mr. Howland Bancroft.

Q. Who is Mr. Bancroft?

A. A mining engineer.

Q. After the company and its properties were brought to your attention by Mr. Bancroft, did you have any dealings with the corporations, or their stockholders? A. I did. [13—9]

Q. Where? A. In San Francisco.

Q. What was the result of the negotiations or dealings which you had at that time?

A. There were two contracts entered into, one providing for the advance of certain moneys by me as against tungsten concentrates shipped by the mine; the other contract gave me an option on the purchase of the property.

Q. Have you those contracts? A. I have.

Q. I call your attention to a paper which is dated the 17th day of January, 1919, and ask if you have ever seen that before? (Hands to witness.)

A. I have.

Q. Was that contract executed by you?

A. It was.

Q. And was it executed by the corporation?

A. It was.

Q. What company?

A. Nevada Humboldt Tungsten Mines Company, by L. A. Friedman, president, by R. Nenzel, secretary.

(Testimony of David Taylor.)

Q. What was the name of the other company?

A. Tungsten Products Company, L. A. Friedman, president, R. Nenzel, secretary, L. A. Friedman, trustee.

Q. Is that the one you referred to as the ore buying contract? A. It is.

Mr. THATCHER.—We offer it in evidence.

Mr. WHEELER.—It seems to me both contracts, Exhibits “A” and “B,” are admitted by the pleadings. I don’t think it is necessary to encumber the record with them.

Mr. THATCHER.—I merely want to identify them, and keep the record straight. They are offered, if the Court please.

The COURT.—If they are both admitted, what is the necessity of introducing them?

Mr. THATCHER.—I don’t know whether they are admitted or not.

Mr. WHEELER.—I do.

Mr. COOKE.—There is no question about the contracts anyway. [14—10]

The COURT.—You admit the execution, and also the terms of the contracts, as they are alleged in the pleading?

Mr. COOKE.—Yes, sir.

Mr. THATCHER.—(Q.) After you entered into these contracts, Mr. Taylor, did you inform the defendants, or any of them—I am speaking now particularly of the option—as to whether or not you were going to exercise the option contract?

A. Yes.

(Testimony of David Taylor.)

Q. I call your attention to—I would like to have counsel produce the original unless you admit this is a copy—a letter dated February 24th, addressed to R. Nenzel, Esq., secretary of the Nevada Humboldt Tungsten Mines Company, signed by David Taylor.

Mr. COOKE.—Let us see it, Mr. Thatcher, and we can tell.

(The letter is handed to Mr. Cooke.)

Mr. COOKE.—I notice you have the date on here, Mr. Thatcher, New York; the original that I have before me the date line is Denver, do you know anything about whether it was written from New York or Denver?

Mr. THATCHER.—No, I do not, I can find out. If you have the original, I would like to have it.

Mr. COOKE.—I think that is the original, Mr. Thatcher. (Hands letter to counsel for plaintiff.)

Mr. THATCHER.—Q. Is this the letter which you wrote at that time? (Handing letter to witness.)

A. It is. The date—

Q. Never mind. I will ask the question.

Mr. WHEELER.—I would like to object on behalf of my client on the ground that it is irrelevant, incompetent and immaterial; it does not prove the issues tendered by you, and as to us, is hearsay. It seems to be a notice written to a secretary of a [15—11] corporation, not in response to the allegations found on page 5 of your complaint.

(Testimony of David Taylor.)

Mr. THATCHER.—Well, we offer it in evidence, if the Court please.

Mr. COOKE.—We make the same objection. This is a notice to the secretary of the corporation, and not to these parties who entered into this agreement, and the stockholders.

Mr. WHEELER.—Your Honor will observe the contract with respect to the stock was signed by individuals; here is a notice purporting to be addressed to one individual, secretary of the corporation, and it does not correspond to this allegation: "That on or about the month of March, 1919, plaintiff informed the defendants Friedman, Poole, Lena J. Friedman, Huntington, Nenzel, Jones, Hinch, Goodin, Twigg and Murrish that it was probable that the plaintiff would not be able to exercise his option to purchase said interests of the defendants in said corporations under said contract of January 16th." Here is a notice purporting to be to the officer of the corporation, not a party to the contract, in his official capacity, and is not a notice to any individual.

Mr. THATCHER.—Well, it at least notifies the defendant, the Nevada Humboldt Tungsten Mines Company, as to the situation. It certainly puts upon notice Mr. Nenzel, who is the secretary, whether he acquires this notice in his individual capacity, or as secretary.

The COURT.—You don't allege any notice to the company, do you?

(Testimony of David Taylor.)

Mr. THATCHER.—We don't allege any notice to the company, no.

The COURT.—Well, I will admit it subject to the objection.

Mr. THATCHER.—I am going to offer a number of letters, and I will read them all later.

The COURT.—You don't allege any notice to Mr. Loring, do you? [16—12]

Mr. THATCHER.—No, not so far as this is concerned. This is preliminary, showing what led up to other transactions.

Mr. WHEELER.—If it is of any consequence it would be a defense to Mr. Loring as well as anybody. Mr. Loring's interests are affected if this contract is enforced; therefore every item going to specific performance affects him.

The COURT.—It will be admitted for what it is worth, subject to the objection.

Mr. COOKE.—There are a number of paragraphs not going to the question of notice.

Mr. THATCHER.—It is offered for all purposes. I don't restrict it.

Mr. COOKE.—We would like to have the benefit of an exception to the ruling in the record.

The COURT.—The order admitting it, so far only admits it for the purposes for which it was offered, for notice, and that notice appears to be given in the first paragraph—the first two sentences in the first paragraph; the rest is not admitted.

(Letter dated February 24th is marked Plaintiff's Exhibit No. 1.)

(Testimony of David Taylor.)

Mr. WHEELER.—In the interest of time, your Honor, will it be agreeable to you, and to opposing counsel, when objection is made by either counsel for defendant, it will be deemed as made for the benefit of each and all of the defendants, jointly and severally, as the case may be; and also any adverse ruling may be deemed excepted to, without the necessity of taking a formal exception at the time?

Mr. THATCHER.—If that is satisfactory to the Court it is satisfactory to me.

The COURT.—Very well.

Mr. THATCHER.—(Q.) Mr. Taylor, before sending that letter, [17—13] and after you were in San Francisco and had entered into the contracts, which you have called the ore buying contract and the option contract, did you do anything else with reference to the mines? A. I did.

Q. What did you do?

A. I engaged Mr. Howland Bancroft to examine the mine, and I went to New York for the purpose of selling concentrates, and investigating the tungsten market, checking up my previous knowledge of it.

Q. After you sent Mr. Bancroft to the mine, did he make any report on the mine? A. He did.

Q. Did you receive that report from Mr. Bancroft? A. I did.

Q. About what time did you receive that report?

A. About February 20th.

Q. Where were you when you received it?

(Testimony of David Taylor.)

A. In New York.

Q. Had you previously received information from Mr. Bancroft by telegram, letter, or otherwise, as to the general contents of the report, or what the situation was?

A. I think the day before that, or two days before, I had received a telegram from my office in Denver, stating merely the tonnage of ore that was blocked out.

Q. As shown by the Bancroft report? A. Yes.

Q. And then about the 24th, you sent the letter to which I called your attention? A. I did.

Q. I call your attention to a letter on the letter-head of the Nevada Humboldt Tungsten Mines Company, and ask you if you have ever seen that letter before? A. I have.

Q. Whose signature is to that letter?

A. R. Nenzel.

Mr. WHEELER.—What date, please?

Mr. THATCHER.—February 14, 1919. (Q.) Calling your attention to that letter, I notice some pencil marks on it, were they on it at the time you received it? A. They were not. [18—14]

Mr. THATCHER.—I offer it in evidence, if the Court please.

Mr. WHEELER.—Objected to as incompetent, irrelevant and immaterial; it appears that it is not a representation binding upon the parties to the contract in question; moreover, it appears that it was not sent at a date prior to the making of Mr. Bancroft's report, the first report to the plaintiff;

(Testimony of David Taylor.)

Bancroft being an independent investigator, investigating the property on his own account.

Mr. COOKE.—I wish to add to that objection the further point that whatever representation this is, it was made long anterior to any alleged representations of the April contract, not in view of the contract, and therefore was not made for the purpose of inducing Mr. Taylor to enter into the contract as alleged.

Mr. WHEELER.—I am not sure that I made one of my objections clear. This seems to be signed by Mr. Nenzel; it is on the letter-head of the company; it is either a representation of the company, or of Mr. Nenzel personally; if a representation of the company it would be hearsay as to all the other parties; if made by Mr. Nenzel it would not be binding on any person unless it is shown that Mr. Nenzel made it with authority, and that would apply to each and every defendant other than Mr. Nenzel. There is no charge here that Mr. Nenzel alone, on his own account made any representations which resulted in this contract.

The COURT.—I will admit that. It will be admitted as against Mr. Nenzel for the present.

Mr. THATCHER.—It is admissible as against Mr. Nenzel, and before I get through I think your Honor will find these are all admissible as against all of the parties, because I believe we will bring all of this home to all of the defendants, but it is certainly admissible as against Mr. Nenzel. I offer

(Testimony of David Taylor.)

it in evidence and ask that it be given the proper marking. [19—15]

(Letter dated February 14, 1919, marked Plaintiff's Exhibit No. 2.)

Mr. THATCHER.—(Q.) I call your attention to a letter dated February 24, 1919, on the stationery of the Nevada Humboldt Tungsten Mines Company, and ask you if you ever saw that before? (Hands to witness.) A. I did.

Q. Who is that signed by? A. R. Nenzel.

Q. You know Mr. Nenzel's signature, do you?

A. I think so.

Q. I call your attention to some pencil marks on the letter, and ask you if they were on when you received it, or were they put on afterwards.

A. They were put on afterwards.

Mr. THATCHER.—We offer it in evidence; it is addressed to the Consolidated Ores Company. I am going to ask another question.

Q. Mr. Taylor, who is the Consolidated Ores Company?

A. The Consolidated Ores Company is a Colorado corporation, of which I own 99.98 per cent of the stock; the business is buying and selling ores.

Q. Did this letter addressed to the Consolidated Ores Company, did that come to you? A. Yes.

Q. And you received it? A. I did.

Q. Did you also about the same time receive a telegram from Mr. Nenzel, which contains some, or a good deal of the information which is contained in that letter? A. I did.

(Testimony of David Taylor.)

Mr. WHEELER.—Objected to as calling for the contents of the instrument.

Mr. THATCHER.—I have not asked it. (Q.) Have you that telegram? A. I have not.

Q. Have you a copy of it?

A. No, I don't own one.

Mr. THATCHER.—I offer this letter in evidence, if the Court please.

Mr. WHEELER.—Our objection will go to all this line, that [20—16] Mr. Nenzel had signed something; I presume your Honor's ruling will go to all that?

The COURT.—I presume it contains statements after the Bancroft report?

Mr. WHEELER.—Not after the Bancroft report had come to the knowledge of the witness, but after Bancroft had visited the mine, the representation of its condition after he had visited it.

Mr. THATCHER.—This letter is after he had knowledge of the Bancroft report.

Mr. COOKE.—The other one was not.

Mr. THATCHER.—The other was after the Bancroft report had been made, the examination had been made, but before he received the report.

The COURT.—They both refer to conditions subsequent to the time Bancroft made his examination?

Mr. THATCHER.—Yes. (Q.) I call your attention also to the letters, in ink, "so" and over at the side "DPT"; who put those on there?

A. I did.

Q. They were not on there in the original letter?

(Testimony of David Taylor.)

A. They were not.

Mr. THATCHER.—We offer the letter in evidence with the exception of the pencil marks, and the change in that interlineation by the witness.

Mr. WHEELER.—I would like to add the special objection to this letter to all the other objections made, that it appears to be a letter not addressed to the witness, but to some other person, a corporation, and it was not exhibited to the witness by the defendants, or any or either of them.

The COURT.—I will overrule the objection, and the letter may go in for what it is worth as against Mr. Nenzel. [21—17]

(Letter dated February 24, 1919, is marked Plaintiff's Exhibit No 3.)

Mr. THATCHER.—(Q.) Mr. Taylor, calling your attention to Exhibit No. 3, it states "As per my letter of recent date, I hereby wish to give the information of the telegram I sent to Captain Taylor at New York yesterday," and then it quotes the telegram; did you receive such a telegram?

A. I did.

Q. Have you at the present time the telegram that you received? A. I have not.

Q. Have you a copy of it?

A. I have not to my knowledge.

Q. Do you know what has become of it?

A. No, it was checked up—

Q. (Intg.) Never mind. Do you know what has become of it? A. I do not.

Q. Have you made search for it? A. I have.

(Testimony of David Taylor.)

Q. Have you been able to find it in any of your files or papers? A. I have not.

Mr. THATCHER.—I would ask counsel if they have a copy of a telegram sent to Captain Taylor to New York, on February 23, 1919.

Mr. COOKE.—That telegram is set forth in this letter.

Mr. WHEELER.—It is a fact a telegram was sent, but it would not admit the telegram as evidence, and we object to the evidence on all the grounds urged. Such a telegram was sent; it appears evident that such a telegram was sent; Mr. Nenzel says he sent a telegram in the words and figures as follows; we admit the fact, but we renew our objections.

The COURT.—It will be admitted under the same ruling.

Mr. THATCHER.—Will counsel produce the original of the letter of March 7th, addressed to the Nevada Humboldt Tungsten Mines Company.

Mr. COOKE.—Have you a carbon copy there? [22—18]

Mr. THATCHER.—I have a carbon copy.

Mr. COOKE.—We have no objection to using a carbon copy, assuming it is a correct copy.

Mr. THATCHER.—I don't know that it is.

Mr. COOKE.—If it is a carbon copy it must be correct.

Mr. THATCHER.—(Q.) I call your attention to a carbon copy of a letter on the letter-head of the

(Testimony of David Taylor.)

Consolidated Ores Company; did you send that letter? A. I did.

Q. Is it a true and correct copy? A. It is.

Q. In the usual course of mail, addressed to the Nevada Humboldt Tungsten Mines Company at Lovelock? A. Yes.

Q. Was that in response to the letter of March 24th and telegram of March 23d, to which your attention has just been called, exhibit 3?

A. I should say it was.

Mr. THATCHER.—We offer it in evidence.

Mr. WHEELER.—We renew the objection on all the grounds urged, and call attention to the fact this is a letter addressed by the witness, David Taylor, to Nevada Humboldt Tungsten Mines Company, and while it might show the attitude of his mind to that company, there is nothing to suggest it ever became known to the defendants, or any or either of them, who signed the contract.

Mr. COOKE.—With reference to the development work in the mine as recently reported, it is not shown by whom reported, or whether he has reference to the previous reports from Mr. Nenzel, or from somebody else—Bancroft or somebody else.

Mr. THATCHER.—It is true that the letter does not so state, but Mr. Taylor has just testified that this letter was written in response to the telegram of the 23d and the letter of the 24th.

Mr. COOKE.—The witness put his construction on the letter; the letter will show for itself.

(Testimony of David Taylor.)

The COURT.—It seems to me you should connect that with some of the defendants before it is admissible.

Mr. THATCHER.—I ask to have it marked for identification, if the Court please.

(The letter dated March 7, 1919, is marked Plaintiff's Exhibit No. 4. for identification.)

Mr. THATCHER.—I would like to ask counsel to give me a letter of March 7, 1919, which was addressed to Mr. C. W. Poole, Nevada Humboldt Tungsten Mines Company, Mill City, by Mr. Taylor.

(The letter is handed to counsel for plaintiff by Mr. Cooke.)

Mr. THATCHER.—(Q.) I call your attention to a letter on the letter-head of the Consolidated Ores Company, addressed to Mr. Poole, and ask if you wrote that letter to Mr. Poole on the 7th of March? A. I did.

Mr. THATCHER.—We offer it in evidence, if the Court please.

Mr. WHEELER.—We renew the objections, and if they are overruled, the letter must be confined to the defendant Poole alone, it not appearing that anybody else knew anything about it.

The COURT.—It will be admitted as against Mr. Poole, subject to the objection.

(Letter of March 7th, 1919, is marked Plaintiff's Exhibit No. 5.)

The COURT.—I am assuming, Mr. Thatcher, that all these letters relate to conditions in the

(Testimony of David Taylor.)

mine subsequent to the Bancroft report.

Mr. THATCHER.—Yes, sir. (Q.) I call your attention to a letter on the stationery of the Nevada Humboldt Tungsten Mines Company, dated March 10, 1919, addressed to Captain David Taylor, and ask you if you receive that letter?

A. I did.

Q. Whose signature is to that letter?

A. R. Nenzel. [24—20]

Q. I call your attention to certain pencil marks on it; who put those on there? A. I did.

Q. And they were put on after you received the letter? A. They were.

Mr. THATCHER.—I offer it in evidence.

Mr. COOKE.—We object to it upon the ground it purports to be the statement of the defendant Nenzel only, and not binding upon any of the other defendants.

Mr. WHEELER.—And on each and all of the grounds heretofore urged.

The COURT.—It will be the same ruling.

(Letter dated March 10, 1919, is marked Plaintiff's Exhibit No. 6.)

Mr. THATCHER.—(Q.) I call your attention to a letter of date March 11, 1919, addressed to the Nevada Humboldt Tungsten Mines Company, on the letter-head of the Consolidated Ores Company. Have you the original of that letter, Mr. Cooke?

(Original letter handed to Mr. Thatcher.)

Mr. THATCHER.—(Q.) Did you send that letter, Mr. Taylor? A. I did.

(Testimony of David Taylor.)

Mr. THATCHER.—I offer it in evidence. This letter, if the Court please, is addressed to the Nevada Humboldt Tungsten Mines Company only.

Mr. WHEELER.—The objection is renewed, and particularly on the ground it does not appear to be addressed to any of the parties charged with the alleged misrepresentations.

Mr. COOKE.—We especially object to this letter, and we think the same objection is applicable to the others, that it is not responsive to the allegations of the complaint; that there is no statement in any of those that corresponds with these allegations [25—21] here as to the large amount of ore blocked out, developed and placed in sight and made ready for mining. I have not had time to look at this letter specially, with this particular point in view, but it does not seem to me that it contains any representations of any kind or character, and certainly no representations with reference to the amount or character of the ore blocked out, developed or ready to be mined, and we think in these allegations of fraud the proof should conform with reasonable certainty and closeness to the allegations.

The COURT.—The previous letters have been admitted on my understanding that they related to the conditions in the mine subsequent to the time when the Bancroft report was made; if they don't relate to the conditions in the mine, it seems to me they do not meet or answer the allegations in the complaint.

(Testimony of David Taylor.)

Mr. COOKE.—That is the point I am making, that they do not, none of them.

The COURT.—Let me ask you a question, General: Do you expect to introduce letters with reference to any other misrepresentation, or any other conditions except those in the mine?

Mr. THATCHER.—Why, I do, if the Court please. In other words, I will say frankly to your Honor, that I expect to show there was a series of misrepresentations with reference to the ores and conditions in the mine, all of which, of course, bear on the condition in the mine, either one way or another; for instance, there will be a representation that we are producing at the mill ore so rich that it clogs up the machinery; things of that kind, all coming from the mine, and all of which, coming together, making up the whole question of misrepresentation.

(Discussion.)

Mr. WHEELER.—The point is there is nothing whatever in that [26—22] letter that will have a similar bearing which caused your Honor to admit the preceding letter.

Mr. THATCHER.—I will connect it up, if the Court please; I will connect it up with Mr. Nenzel, at least, immediately.

The COURT.—Well, when it is connected, it may be admitted.

(Letter dated March 11, 1919, marked Plaintiff's Exhibit No. 7 for identification.)

Mr. THATCHER.—(Q.) I call your attention to

(Testimony of David Taylor.)

a telegram on Western Union, and ask you if you received that telegram over the wires?

A. I did.

Q. And when, about the date of the telegram, March 12th?

A. Yes, Lovelock, March 12th, I probably received it the next morning, a night letter.

Mr. THATCHER.—I offer it in evidence.

Mr. WHEELER.—It is objected to on the same grounds as the one last offered.

Mr. THATCHER.—The telegram is as follows:
(Reads)

“Lovelock, Nevada 12. Capt. David Taylor, 730 Rymes Bldg. Denver Colo. Your message and letters received stop Poole Friedman and Murrish out of town stop will get in touch with them tomorrow and wire you fully stop just returned from mine stop mine never looked so good stop are experiencing difficulty in roasting concentrates owing to sulphur fumes assay on concentrates twenty-three tons now at Mill City sixty-six per cent tungsten point thirty-seven sulphur R. Nenzel.”

The COURT.—The ruling will be the same.

(The telegram dated March 12th is marked Plaintiff's Exhibit No. 8.)

Mr. THATCHER.—(Q.) I call your attention to a letter, dated March 21st, on the letter-head of the Nevada Humboldt Tungsten Mines [27—23] Company, and ask you if you received that letter?

(Testimony of David Taylor.)

A. I did.

Q. Were those pencil marks on there when you received it?

A. They were not.

Mr. THATCHER.—We offer the letter in evidence, with the exception of the pencil marks.

Mr. COOKE.—The same objection as to this. It is simply the representation of one of the defendants, not shown to have been made with the authority of any of the others, and not binding upon them.

Mr. WHEELER.—And of course I suppose it is understood that as to all of this we have our objection that it is irrelevant and immaterial, and not tending to prove the precise allegations of the complaint; whether it is a misrepresentation or otherwise, or a matter of opinion, it does not tend, as I say, to prove any of those allegations.

The COURT.—It will be the same ruling.

(The letter dated March 21, 1919, is marked Plaintiff's Exhibit No. 9.)

Mr. THATCHER.—(Q.) I call your attention to a telegram, Western Union, dated at Lovelock, March 24th, and evidently received March 25th, and ask if you ever saw that before?

A. I did.

Q. By whom is that signed?

A. L. A. Friedman.

Q. Did you receive that telegram?

A. I did.

(Testimony of David Taylor.)

Mr. THATCHER.—We offer it in evidence.

Mr. WHEELER.—We object to it upon all the grounds heretofore urged, particularly that whatever Mr. Friedman may have wired will not bind any of the other defendants; there is nothing there that would even tend to prove any of the allegations of the bill; [28—24] the evidence is hearsay, *res inter alios actae* as to the defendant Loring, and as to each and all of the other defendants.

Mr. COOKE.—Also it does not purport to be anything more than an expression of hope on the part of Mr. Friedman; not a representation of any facts such as those alleged in the complaint.

The COURT.—That will be admitted, but as against Mr. Friedman only.

Mr. THATCHER.—I offer this for the purpose of binding Mr. Friedman, and to show that he had reviewed the previous correspondence. The telegram is as follows:

(Reads:)

“March 25, A. M. 4:30. Lovelock, Nevada.
Capt. David Taylor, 730 Symes Bldg. Denver,
Colo. Just returned from legislation and reviewed all your correspondence stop conclude from your correspondence that you feel unable to exercise your present option owing to depressed tungsten market condition and therefore we must anticipate your possible failure to exercise your option stop suggest that you and Bancroft come here some time this week

(Testimony of David Taylor.)

as all stockholders are here now and am sure you will find mine development fulfilling your most sanguine expectation and am confident that we could arrive at some modified arrangement as suggested in your correspondence but immediate action is necessary as am leaving for New York and Washington in week or ten days and would stop off at Denver but am traveling with several other parties wire answer. L. A. Friedman.”

(The telegram is marked Plaintiff’s Exhibit No. 10.)

Mr. THATCHER.—(Q.) Did you reply to that telegram, Mr. Taylor?

A. I did.

Mr. THATCHER.—Have you the telegram sent by Mr. Taylor to Mr. Friedman, March 25th?

Mr. COOKE.—Same general objection, so far as we are concerned [29—25] incompetent and immaterial, and don’t tend to prove anything.

Mr. THATCHER.—(Q.) You sent this telegram to Mr. Friedman, did you?

A. Yes.

Mr. THATCHER.—You folks received it, did you?

Mr. COOKE.—Well, L. A. Friedman, President of the Nevada Humboldt Tungsten Mines Company, received it, I suppose. Of course we reserve our objection that these communications between Mr. Taylor and some one of these parties is not

(Testimony of David Taylor.)

notice to all of these parties, and not evidence against any party except the one that is shown to have received it.

Mr. WHEELER.—And in its nature don't tend to prove fraud or misrepresentation.

The COURT.—I cannot always realize when a letter is offered which has some relation to the matter in hand, what use counsel intend to make of it when they come to make the argument. I presume some letters of that sort will be admitted in this case, and ignored in the argument, if we get to the argument; but I think I will admit all of these letters if they have any relation to this particular business, representations and correspondence which induced the making of the contract, which is marked Exhibit "C" in the complaint, and if there is any desire on your part to weed them out of the argument, perhaps it can be done. If I take the time to weed out of each letter all the irrelevant matter, we will not get in more than fifteen or twenty letters during the course of the day.

Mr. THATCHER.—We offer the telegram.

The COURT.—Of course that telegram is only admitted as against Mr. Friedman.

Mr. WHEELER.—That I understood would be the rule.

(Telegram dated March 25th, 1919, marked Plaintiffs' Exhibit No. 11.) [30—26]

Mr. THATCHER.—(Q.) I show you, Mr. Taylor, the original of a letter sent by you to Mr. L. A.

(Testimony of David Taylor.)

Friedman, dated March 25, 1919; was that underscored by you at the time you sent it?

A. I don't remember; I don't absolutely remember, I should think it was.

Q. Your best recollection is that you underscored that before you sent it?

A. I could not say my best recollection, no; I don't know; I should say from the context of the letter I had.

Mr. THATCHER.—We offer that in evidence, if the Court please.

Same objection and same ruling.

(Letter dated March 25, 1919, is marked Plaintiff's Exhibit No. 12.)

Mr. WHEELER.—It is admitted only as against Mr. Friedman, as I understand?

The COURT.—Only as against Mr. Friedman.

Mr. THATCHER.—(Q.) I call your attention to a letter of March 27th, 1919, and ask you if you have seen that before?

A. I have.

Q. Did you receive this letter, Mr. Taylor?

A. I did.

Q. From Mr. Nenzel?

A. Yes.

Q. I call your attention to some pencil marks on it, were they there when you received this letter?

A. They were not.

Q. You put those on yourself?

A. I did.

(Testimony of David Taylor.)

Mr. THATCHER.—We offer the letter with the exception of the pencil marks.

Mr. COOKE.—The same objection that has been made to all of the other letters.

The COURT.—It will be the same ruling, admitted as against Mr. Nenzel.

(Letter dated March 27th is marked Plaintiff's Exhibit No. 13.)

Mr. THATCHER.—I offer in evidence a telegram of March 28th [31—27] to Mr. Taylor from Mr. Nenzel:

“Murrish Poole and I leave number twenty to-morrow morning arriving Denver Sunday noon.”

Mr. COOKE.—Objected to as incompetent, irrelevant and immaterial, not proving or tending to prove any issue in the case, simply stating that they intend to come to Denver.

(Discussion.)

The COURT.—I will admit it, but it will be admitted only as against Mr. Nenzel.

(Telegram dated March 28, 1919, marked Plaintiff's Exhibit No. 14.)

Mr. THATCHER.—(Q.) Mr. Taylor, did Mr. Nenzel, Mr. Murrish and Mr. Poole come on to Denver?

A. They did.

Q. You had previously received Mr. Bancroft's report of his first examination of the mine, had you?

(Testimony of David Taylor.)

A. I had.

Q. I call your attention to the report of Mr. Bancroft, and ask you if that is the original report which you received from him?

(Hands to witness.) A. It is with the exception of this supplemental report.

Q. Take the supplemental report out; did you have this report at the time Messrs. Murrish, Poole and Nenzel came to Denver?

A. I did.

Q. I call your attention to plate number 5 incorporated in that report, and ask you whether or not that plate number 5 is in the same condition now that it was when you received it from Mr. Bancroft? A. It is not.

Q. What difference is there in it?

A. There are a number of pencil lines and figures made upon it.

Q. Were they on there when you received it from Mr. Bancroft? A. They were not.

Q. They were not a part of the original first report of Mr. Bancroft [32—28] to you on this mine? A. They were not.

Q. When did they arrive in Denver, Mr. Taylor?

A. Sunday afternoon, I think it was March 30th.

Q. And did you see them that day?

A. I did.

Q. Kindly tell what took place that day—where did you see them?

A. They came to my office in the Symes Building.

(Testimony of David Taylor.)

Q. Tell what took place at that time, Mr. Taylor?

A. There was a general discussion first, I don't know whether first or not, but there was a general discussion that afternoon about the tungsten situation, the conditions of the market, the developments and conditions of the mine, the probabilities that I would not exercise my original option; I think various questions of the policy of the company, and so forth, were taken up.

Q. Did you discuss at that time the conditions of the mine? A. We did.

Q. Who was present at that meeting?

A. Messrs. Poole, Nenzel and Murrish.

Q. Were all three there all of that time?

A. They were that afternoon.

Q. Did you at that time show Mr. Poole, or any of them, Mr. Bancroft's report? A. I did.

Q. Tell what you did with reference to it at that time?

A. I asked Mr. Poole if he had ever seen Mr. Bancroft's full report; he stated that he had not, though he was familiar with some parts of it which I think Mr. Bancroft had given him previously; I asked him if he would like to read the report, and he said he would; I told him he could take it with him to his hotel that night, and bring it back to me the next day.

Q. Did you make any other request of him at that time?

A. I asked him to plot on that map information

(Testimony of David Taylor.)

which he had as to [33—29] recent developments at the mine, or developments since Bancroft's report had been made, at the mine.

Q. Is that about all that took place on the first day, or Sunday?

A. Yes, I should say it was.

Q. When did you see Mr. Poole, Mr. Nenzel and Mr. Murrish again?

A. They came down to my office Monday morning, the following day.

Q. Will you state what took place at that time?

A. They came into the office, I think Mr. Poole and Mr. Nenzel came in first, and we talked a little bit on general matters; I asked Mr. Poole if he had put on the original Bancroft report memoranda showing the additional tonnage of ore, with its values, that had been blocked out since his report; he stated that he had not had an opportunity to do that; he had with him some maps, mine maps or reports, records; I said, "Well, let us get the figures down now"; Mr. Poole gave me the lines, and figures were put on by me. Mr. Poole giving me the tonnages and assay values, widths of ore, and other memoranda that was put on at that time, with lines to represent the limits of the ore bodies, together with the figures which he claimed—figures of commercial ore which he claimed were shown by those lines.

Mr. THATCHER.—I offer this in evidence, if the Court please. I am probably a little previous

(Testimony of David Taylor.)

about it, but the rule of this Court is that you can't examine a witness about an instrument until it has been in evidence.

Mr. WHEELER.—I would like to ask the witness a few questions.

Q. You say the map, plate number 5, is not in the same condition it was when you received the report from Mr. Bancroft? A. I did.

Q. The additions thereon, pencil lines and figures, were placed there by whom?

A. By myself. [34—30]

Q. On what day were they placed there?

A. The day after Messrs. Poole, Murrish and Nenzel arrived in Denver, I think it was April 1st.

Q. They were placed there on Monday, and not on Sunday?

A. They were placed there the day after they arrived.

Q. In your office? A. In my office.

Q. And what were the circumstances under which you placed them there?

Mr. THATCHER.—I object, if the Court please, to cross-examination of my witness now.

Mr. WHEELER.—Then if I am not permitted to question the witness, I object to it as self-serving. I want to find out how he came to put them on there.

The COURT.—Proceed.

WITNESS.—What was the question, please?

Mr. WHEELER.—(Q.) I say under what cir-

(Testimony of David Taylor.)

cumstances did you place them there?

A. Mr. Poole stated to me certain area blocked out, and I asked him to put it down on this map, and show me where it was.

Q. You say what he stated to you, you placed here on the map? A. I did.

Q. What portion of the figures here were so placed by you and what portion by Mr. Bancroft, on the original report?

A. All the pencil lines, all the pencil memoranda were placed by me in Mr. Poole's presence, Mr. Poole reading me the figures to put down, and standing over my chair most of the time when I was putting them down, and telling me the figures.

Q. Did you observe from what memoranda or document he read the figures?

A. Some of the figures he read from the map, and some [35—31] of them may have been from memoranda that he had with him; he brought with him a large map that morning.

Q. What figures did he read from the map and what from the memoranda?

A. I could not tell you, sir.

Q. Do you know from what source he obtained the information contained in the map or in the memoranda? A. I do not know.

Q. That is the identical paper used at that time, you have not since made any transfer to that paper? A. None whatever.

(Testimony of David Taylor.)

Q. It was that paper made in the presence of Mr. Poole? A. It was.

Q. Where were you when this took place, in your office? A. In my office.

Q. At that time your office consisted of one or two rooms?

A. My private office consisted of one room.

Q. In which room was it, the private office or the other? A. Private office.

Q. Were you in the room where a drawing table was?

A. There was a drawing table, not in use, though.

Q. Did you place this on the drawing table when you did the work? A. No.

Q. Where was Mr. Murrish at the time you did this?

A. Whether Mr. Murrish was in there during that time, or came in during the process, I am not sure.

Q. Are you sure he was there any part of the time? A. Yes.

Q. What part?

A. I could not tell you exactly what part.

Q. A part of the time when the map was being drawn and the figures written down? A. Yes.

Q. Which part?

A. I could not tell you.

Q. Did Mr. Murrish participate in the transaction, say anything with regard to it, to give you any figures or lines to put down? A. No. [36—32]

(Testimony of David Taylor.)

Q. What did Mr. Nenzel do in that particular, was he there?

A. Mr. Nenzel was there I think all of the time.

Q. Did he participate in it, or give you any lines, or give you any figures?

A. He may have discussed with Mr. Poole some of the figures; he did not give me any of the lines.

Q. You say he may have done so, did he?

A. I say he may have done so.

Q. You don't mean to say that he did?

A. I don't know whether he did or not.

Q. Both Mr. Murrish and Mr. Nenzel were in the same room with you and Mr. Poole?

A. They were part of the time.

Q. Do you know whether they were participating in any way in the transaction, or even hearing the figures that were given, or had a notion as to what lines were being put on the map?

A. They could not help hearing the figures given, and seeing what was being done while they were in the room, it was a small room.

Q. They were not participating in the conversation, were they? A. I don't know.

Q. Was there any other person present at the time? A. Any other person than who?

Q. Than those mentioned, yourself, Mr. Nenzel, Mr. Poole and Mr. Murrish.

A. Mr. D. R. C. Brown and Mr. F. M. Taylor may possibly have been in the room off and on, they were not there throughout; I don't know that they

(Testimony of David Taylor.)

even came in the room, they had adjoining offices.

Mr. WHEELER.—We renew the objection as incompetent, irrelevant and immaterial, self-serving and hearsay, and in any aspect of your Honor's rulings heretofore, not receivable in evidence against any [37—33] person except Mr. Poole, with whom the alleged conversation took place, and who gave the alleged figures; it is not shown that Mr. Murrish or Mr. Nenzel knew anything about the figures, and hence it is not binding upon them, not purporting to be their representation, but merely a conversation as between Mr. Poole and the witness.

The COURT.—That plate will be admitted as against Mr. Poole and Mr. Nenzel. You say, however, that Mr. Murrish was not in the room all of the time?

WITNESS.—I think he was not there all the time; I think he came in there later.

Q. Mr. Nenzel was there all the time?

A. I think he was there; he may have been a few minutes later than Mr. Poole.

Q. Was he there all the time the figures were being placed on the plate?

A. I should say probably he was; Mr. Murrish was not; Mr. Poole gave me the figures.

The COURT.—Well, I think I will admit it as against all three of them. The testimony as to Mr. Murrish's knowledge of the matter is not very satisfactory, but it will be admitted, the plate only.

(Testimony of David Taylor.)

Mr. WHEELER.—The whole report is going in, I take it?

The COURT.—It will if you wish it; the plate is all that he has given testimony about.

Mr. THATCHER.—I appreciate that we will have to connect it up by Mr. Bancroft, showing this is the result of his examination; but he did receive this report, and that report and the statement is what he relied on. Do you want it all in, Mr. Wheeler?

Mr. WHEELER.—It should go in as the report that was discussed. [38—34]

The COURT.—The plate is what I am admitting, but the report goes in because counsel wishes it.

Mr. WHEELER.—Yes.

The COURT.—It is not shown that Mr. Poole examined the report, he simply had it.

Mr. THATCHER.—I am not sure about that. (Q.) Mr. Taylor, did Mr. Poole say that he had examined the report, or that he had not examined the report, or did he merely say that he had not put the lines on; did he say whether or not he read the report?

A. Yes; he said that he had not had opportunity to put the lines and figures on; he said that he had read the report, and we discussed it.

Q. The report was discussed at that time with Mr. Poole? A. Yes.

Mr. COOKE.—I take it, it is now going in simply as evidence identifying that instrument as the paper—

(Testimony of David Taylor.)

Mr. WHEELER.—(Intg.) That this was Bancroft's report.

The COURT.—The report that he received; there is no testimony as to its accuracy.

Mr. COOKE.—Simply a matter of identification as to what they were using.

The COURT.—There is no testimony as to the accuracy of the figures that were given, no testimony as to any matter of that sort, except the witness states that he put the lines and the figures down as they were given to him by Mr. Poole.

(The Bancroft Report and Plate No. 5, are marked Plaintiff's Exhibit No. 15.)

Mr. THATCHER.—(Q.) Now, Mr. Taylor, after that took place were there any further discussions or negotiations between yourself and Mr. Poole, Mr. Nenzel and Mr. Murrish? [39—35]

A. There were various negotiations covering two or three days, from that time up to the time the contract was signed, the contract of April 2d was signed, in which the terms and the form which the contract was to take were discussed and agreed upon.

(A short recess is taken at this time.)

Q. Were there any other discussions or statements with reference to the mine, Mr. Taylor?

Mr. COOKE.—We wish at this time, if your Honor please, to interpose an objection to any evidence with reference to the conversations or representations made at Denver, upon the ground that the evidence sought to be elicited is doubtless an attempt

(Testimony of David Taylor.)

to prove the allegations of false and fraudulent statements, so alleged in the complaint with reference to the physical conditions at the mine; and that proposition is injected into the case solely for the purpose of excusing the nonperformance of the contract by Taylor, it being affirmatively shown that the consideration for the contract was a performance by Taylor of the condition with reference to his obtaining this money; and it is shown affirmatively that he did not obtain the money that the contract, Exhibit "C," required him to obtain. But he alleges that because of this alleged fraud that occurred down in Denver, that the mine was only about half as valuable as it was represented to be, and therefore because of that alleged fraud he should have an abatement in the price; and upon that theory he offered performance before the expiration of the option of June, 1919, of such performance as he deemed would compensate him for this alleged fraud, the difference between the value of the property as it was represented to him, as he claims, and as it was actually found by him to be, through examination subsequently made by himself and by his man Bancroft.

(Argument.) [40—36]

The COURT.—I will overrule the objection.

Mr. COOKE.—We note an exception.

Mr. THATCHER.—(Q.) Were there any other discussions or statements made at that time with reference to the mine?

Mr. COOKE.—May I interrupt to ask that the

(Testimony of David Taylor.)

same objection, ruling and exception apply to all of this testimony as to the Denver Transaction.

WITNESS.—There was.

Mr. THATCHER.—(Q.) Mr. Taylor, at the time, or during the same day, after these notes were placed upon plate 5 of Mr. Bancroft's report, in the presence of Mr. Nenzel or Mr. Murrish did Mr. Poole make to you any further statement as to the mine and mine conditions? A. He did.

Q. State what was said by Mr. Poole?

A. He stated that there was over 60,000 tons of ore developed within the blocks indicated by those lines, by the pencil lines shown on the map, which would average over 1.75 per cent tungstic acid.

Q. When you say between the pencil lines do you mean the pencil lines and the other marks where pencil marks are made upon plate 5—60,000 tons—?

A. (Intg.) Sixty Thousand Tons altogether, including the original—

Q. Just a minute. Then as I understand it, Mr. Poole's statement was that these blocks which have the pencil memoranda on, and those which are within the pencil lines, had blocked out 60,000 tons, is that correct? A. Yes.

Q. And that is what Mr. Poole stated to you?

A. Yes.

Q. Who did you say was present at that time?

A. Mr. Nenzel and Mr. Murrish.

Mr. COOKE.—That is generally at the conversation, or at the [41—37] particular time this statement was made?

(Testimony of David Taylor.)

Mr. THATCHER.—At the particular time this statement was made?

A. Mr. Nenzel and Mr. Murrish, they all went out together, and these resumes were after the figures had been put down.

Q. Are you sure all those people were present?

A. Yes, sir.

Q. At that time?

A. At the end of this meeting?

Q. Yes. Now what else took place after that?

A. Either Mr. Nenzel or Mr. Murrish, I think Mr. Nenzel had also just been to the mine, and had just come back from it the day before they came to Denver; they also stated that the mine looked in very good condition, though they didn't go into the detail figures that Mr. Poole gave. After that meeting there were negotiations for a day or so, discussions of the form which the new contract should take, and what the terms of it should be, with the result that I think it was a Tuesday evening the terms were decided upon, and Mr. Nenzel and Mr. Poole and Mr. Murrish came to my office the next morning, and the contract dated April 2d was drawn up then, and signed.

Mr. COOKE.—Might I ask a question right there?

Q. Mr. Taylor, you stated a moment ago that Mr. Nenzel had just been in the mine before he arrived in Denver on this contract?

A. No, sir, I did not; I stated that either Mr.

(Testimony of David Taylor.)

Murrish or Mr. Nenzel, I wasn't sure which.

Q. I will accept the correction. Do you mean you knew they had been there of your own knowledge, or that was a part of the conversation?

A. No, I don't state that of my own knowledge; they stated it.

Mr. COOKE.—I didn't think that was clear in the record, so I called attention to it. [42—38]

Mr. THATCHER.—(Q.) Who prepared the contract, Mr. Taylor? A. Mr. Murrish.

Q. Is Mr. Murrish an attorney, do you know?

A. I think he is.

Q. Did you have any attorney to represent you?

A. I did not.

Q. I call your attention, Mr Taylor, to a paper, and ask you if this is the contract that was entered into at that time? (Hands to witness.)

A. It is.

Q. This is your signature to the contract, is it?

A. It is.

Q. And is that also Mr. Poole's signature?

Mr. WHEELER.—That is admitted in the pleadings.

Mr. WHEELER.—No question about it, is there?

Mr. COOKE.—Not so far as we are concerned.

Mr. THATCHER.—There are some other papers attached to this which are not in the pleadings; I am going to offer them all together; there are a number of powers of attorney.

Mr. COOKE.—No objections so far as we are

(Testimony of David Taylor.)

concerned, except the general objection heretofore made to all of this evidence.

Mr. THATCHER.—I offer it in evidence, together with the powers of attorney which are attached to it.

The COURT.—It will be admitted.

(The agreement and papers attached marked Plaintiff's Exhibit No. 16.)

Mr. THATCHER.—(Q.) How did you come to enter into this contract, Mr. Taylor?

Mr. WHEELER.—Objected to as calling for the state of mind of the witness.

Mr. COOKE.—A mere conclusion.

The COURT.—He has already stated the preliminary facts and negotiations, has he not? [43—39]

Mr. THATCHER.—(Q.) Would you have entered into this contract, Mr. Taylor, except for the written and other representations which were made to you, as you have heretofore testified?

Mr. COOKE.—Object to it.

Mr. WHEELER.—Leading and suggestive, and calling for the opinion of the witness.

Mr. THATCHER.—I will take your Honor's ruling on the question.

Mr. WHEELER.—And incompetent.

Mr. COOKE.—A mere self-serving statement whatever the answer would be.

The COURT.—I think I will allow the answer to the question.

(The reporter reads the question.)

(Testimony of David Taylor.)

A. I should not.

Mr. THATCHER.—(Q.) After this contract was executed by you and the other party, what did you do with reference to carrying out the terms of the contract?

A. I started in to try to borrow the money, raise the money necessary to pay off the indebtedness.

Q. State what you did?

A. I first talked to several people in Denver, to see if they cared to go in on the proposition, explaining to them—

Q. (Intg.) Never mind what you stated to them.

A. I talked to Mr. Harry James of the Denver National Bank, to Henry Swan, of Bright, Swan and Company, brokers; to Mr. Moore, of Dwight and Company, brokers, and to one or two individuals, particularly to Mr. David R. C. Brown and to Frank M. Taylor.

Q. Who is Frank M. Taylor?

A. My father. Mr. Brown and Mr. Taylor both said they would put up some money.

Mr. COOKE.—I object to that. [44—40]

Mr. THATCHER.—Never mind what they said.

(Q.) What else did you do?

A. About the middle of April I saw that I had to go East to raise the money. I wanted first to look over the mine myself, just to be able to say that I had seen the mine and mill and knew that it was an operating proposition; I telegraphed to either the company, or Mr. Poole, I think the Nevada Humboldt Company, asking them if they

(Testimony of David Taylor.)

would arrange to have Mr. Poole meet me at the railroad a certain day, and take me through the mine and mill; I then went out to Lovelocks to the mine, getting off at Imlay, somewhere about the 24th or 25th of the month of April, was met at Imlay by Mr. Poole, and taken up to the mine, where we spent the night; the next day Mr. Poole took me through the mine, stating that I had been through all the levels and seen all the workings, pointed out ore to me, the general developments in the mine, and took me after that over the surface outcrops, took me down various other workings, and through the mill; that afternoon we drove into Lovelocks.

Q. Mr. Taylor, what is your business?

A. Buying and selling ores.

Q. How long have you been engaged in the business of buying and selling ores?

A. Since 1902 in general ores, and since 1910 in the rare ores and rare metals.

Q. All that time you have been engaged in that business?

A. With the exception of a couple of years I was in the army.

Q. What has been the character of your professional education, if any, Mr. Taylor?

A. I have had no professional education.

Q. Are you a mining engineer? A. I am not.

Q. Did you ever study to be a mining engineer?

A. I did not.

Q. Ever work in a mine? A. I did not.

Q. Ever sample a mine?

(Testimony of David Taylor.)

A. I did not. [45—41]

Q. Ever have anything to do with the active operations or examination of any mine for the purpose of testing its value? A. I did not.

Q. While you were going through the mine did Mr. Poole make any statements to you as to the mine? A. Yes various statements.

Q. And the conditions in it?

A. There were various statements.

Mr. WHEELER.—The same objections heretofore urged, and I think the ruling of the Court will be this should be confined to Mr. Poole.

The COURT.—Well, it will be the same ruling as heretofore.

WITNESS.—There were different statements made by Mr. Poole and Mr. Morrin, who was with us, I think that is his name, the foreman of the mine, he went through with us.

Mr. WHEELER.—Mr. Morrin is not a party to the contract, your Honor.

Mr. THATCHER.—Well, I won't insist.

The COURT.—You are not asking for any statements made by the foreman?

Mr. THATCHER.—Any statements made by Mr. Morrin may go out.

Q. Did you take any samples for the purpose of having assays made at that time? A. I did not.

Q. Why didn't you do so?

Mr. WHEELER.—Objected to as calling for the opinion and conclusion of the witness, his secret

(Testimony of David Taylor.)

thoughts. What was said and done can be brought out.

The COURT.—Well, If he was induced not to take them by Mr. Poole, you can bring that out, but the fact that he didn't take any samples you have in. I will sustain the objection to the question. [46—42]

Mr. THATCHER.—(Q.) After that where did you go, Mr. Taylor, and what did you do?

A. I went to Lovelock that afternoon, drove down with Mr. Poole, and left that night for New York, left direct from Lovelock, went direct to New York, meeting Mr. Thane.

Q. When did you arrive in New York, if you recollect? A. I think it was April 30th.

Q. What was your purpose in going to New York?

A. My purpose in going to New York was to raise the necessary money to go through with this deal.

Q. What did you do when you got to New York?

A. On the way to New York I prepared with Mr. Thane's assistance, a prospectus, which was to be used to submit with Mr. Bancroft's report, to various people in New York and in the East who I thought might be interested. I talked to a good many people in New York, among them Mr. Dodd and Mr. Buckner, vice-president and president respectively of the New York Trust Company, and Mr. Edwin Holter, a general mining promoter, Chisholm and Chapman, brokers, and Mr. Carl Hlers and

(Testimony of David Taylor.)

Mr. W. S. Morse and Mr. Prosser of the American Smelting and Refining Company.

Q. You say you talked to them, endeavored to interest them?

A. Endeavored to interest them to put up part of the money, take part of the load.

Q. On the deal you put up, what were the terms of the deal with reference to preferred and capital stock?

Mr. COOKE.—To whom?

Mr. THATCHER.—To any one.

Mr. COOKE.—We object to any discussion of the terms between himself and other parties as incompetent, irrelevant and immaterial, not binding upon us, and hearsay; there is no way of contradicting it and no opportunity for cross-examination. [47—43]

Mr. THATCHER.—I submit it, if the Court please.

The COURT.—I will sustain the objection.

Mr. THATCHER.—(Q.) In endeavoring to make this loan, did you offer any inducements in addition to the security of the loan by preferred stock, or otherwise?

Mr. WHEELER.—Objected to as hearsay and irrelevant.

Mr. THATCHER.—This is as to what he did.

The COURT.—What is the purpose of it?

Mr. THATCHER.—Merely to show his efforts in endeavoring to put through the deal and finance the

(Testimony of David Taylor.)

loan, if the Court please, part of the work he did in endeavoring to get the compensation.

The COURT.—I will sustain the objection to that. You can't put that testimony in without giving conversations you have had with other people.

Mr. THATCHER.—(Q.) After that what did you do, what else did you do in New York with reference to the deal, Mr. Taylor?

A. I arranged with Mr. Jackson, who has been my attorney for some time, to go out to Lovelock the end of May or beginning of June, for the final reports, auditor's reports and preliminary examination as to titles, and the subsequent report which Mr. Thane insisted be made by Mr. Bancroft, to check up the conditions of the mine.

Mr. COOKE.—I move to strike out what Mr. Thane insisted upon as hearsay.

The COURT.—That may go out.

Mr. THATCHER.—No objection. (Q.) While you were in New York did you also make arrangements to have Mr. Bancroft make a further examination? A. I did.

Q. About what time did that take place, if you recollect?

A. About the middle of May, the 14th or 15th of May, I think.

Q. And after you had made that arrangement for Mr. Bancroft's second examination, what did you do? [48—44]

A. I stopped in York, Pennsylvania, to talk to one or two other people, and then went west, went

(Testimony of David Taylor.)

to Denver, expecting to meet Mr. Bancroft at Denver after he had completed the examination of the mine.

Q. And later did you come on west, further west?

A. I came west after I had arranged for the necessary funds to take up the indebtedness.

Mr. WHEELER.—I move to strike out “after I had arranged for the necessary funds,” as a conclusion of the witness; it is a vital issue in this case, and we would like to have an opportunity to go into it when the time comes, in proper fashion.

Mr. THATCHER.—I will admit it is not responsive to the question, and the answer may go out.

Q. While you were in Denver did you make any further or definite arrangements with reference to getting moneys for carrying out this contract?

A. I did

Mr. COOKE.—Object on the ground it presupposes, that some arrangement had already been made.

Mr. WHEELER.—It presupposes an arrangement. What was said or done might be brought out without having the conclusion of the witness whether it was an arrangement or contract, or anything of that sort.

The COURT.—The objection is sustained.

Mr. THATCHER.—(Q.) Well, did you make any arrangements—

A. I did.

(Testimony of David Taylor.)

A. Just a minute. Did you make any arrangements for the money necessary to carry out this contract?

Mr. WHEELER.—Objected to as leading and suggestive. I submit that the witness can be asked as to what he did. It need not embody the idea that it was an arrangement for money to carry [49—45] out this contract.

The COURT.—Well, the question is leading, but proceed. A. I did.

Mr. THATCHER.—(Q.) Tell what you did?

A. I arranged with Mr. F. M. Taylor for \$25,000, which was paid; I arranged with Mr. David R. C. Brown for \$10,000, which was held subject to my use whenever I wanted it and needed it. I arranged for—

Mr. COOKE.—(Intg.) We object, if your Honor please, to the witness testifying to his arrangements on the ground that is simply another guise of testifying as to what these people agreed with him, and hearsay as to us, and insufficient; a mere conclusion of this witness as to what constitutes an arrangement, and it is all matter which transpired out of our presence, and no opportunity for us to cross-examine these witnesses that he had these arrangements with.

Mr. WHEELER.—It embodies the idea or conclusion of the witness that it was done pursuant to the contract that was made.

The COURT.—He can tell what he did.

(Testimony of David Taylor.)

Mr. WHEELER.—Does the answer go out so far, your Honor?

The COURT.—He says that Mr. Taylor paid him \$25,000. I think that may stand. He says also that Mr. Brown's amount was \$10,000, which was subject to the witness' order. I think those facts may remain.

Mr. WHEELER.—It does not appear where, how, or under what circumstances the \$25,000 was to be paid.

The COURT.—He can't tell the whole thing at once. You may go on and ask for the facts.

Mr. THATCHER.—(Q.) Go ahead, Mr. Taylor, and tell what else [50—46] you did.

(By direction the reporter reads the last answer of the witness.)

The COURT.—You need not use the word “arrangement,” just tell what you did.

A. I obtained the cash, and had it in bank.

Mr. THATCHER.—(Q.) Did you have Mr. Brown's ten thousand in bank?

A. Not for Mr. Brown's ten thousand, but I had cash for Mr. Taylor's twenty-five thousand, and I had sufficient cash in the bank, which, added to certain bonds which I had in my possession, furnished more than enough money to take care of the complete indebtedness of the company.

Mr. WHEELER.—I move to strike out the answer as being the opinion and conclusion of the witness, it not appearing what the indebtedness was.

The COURT.—The motion is granted.

(Testimony of David Taylor.)

Mr. THATCHER.—(Q.) How much money did you have under these arrangements which you have stated, in cash or immediately available to you?

A. Cash and immediately available, I had about a hundred and twenty-five thousand. I had in bonds, salable on the New York stock exchange, in my own possession, \$50,000 at least, more; I had already taken care of seventy to seventy-five thousand dollars of the indebtedness, so that the indebtedness of the mining company at that time was between one hundred and fifty to one hundred and seventy five thousand.

Mr. COOKE.—I move to strike out the testimony in regard to the bonds upon the ground that the arrangement for bonds is not a compliance with the contract, and that the contract contemplates money for the payment of these debts. The fact that the witness [51—47] might have property, whether bonds, real estate, horses or cattle, is not what the contract contemplates, and therefore any testimony as to his owning bonds, or to his owning any other kind of property which he thinks might be turned into money, is incompetent and immaterial, and not a performance of the contract.

Mr. THATCHER.—If the Court please, these questions are directed only to the situation as it existed in Denver at that time. As I go further with the examination I will proceed and show all of the facts.

Mr. WHEELER.—I have been waiting for the

(Testimony of David Taylor.)

conclusion of the answer to move to strike it all out on the ground it is incompetent, irrelevant and immaterial, and hearsay. The vice in the answers to the questions, and the form in which they have been placed, is not so much in what is said as the things to which they will lead us unless the evidence is brought in in the proper manner.

(Discussion.)

The COURT.—He states in the first place, I had \$125,000 in cash in bank; I can't throw that out as hearsay. He says he had bonds of \$50,000 more; I can't throw that out as hearsay. He says he had taken care of \$75,000 indebtedness; I don't think that can remain. You can't get this all out at once. Those two facts may remain, and the rest may go out.

Mr. THATCHER.—(Q.) Was this \$125,000 which you had in the bank available to you to be used for the purpose of carrying out this contract?

A. It was.

Q. Were the bonds which you had, \$50,000 worth of bonds, available to you for the purpose of carrying out this contract? A. They were.

Mr. COOKE.—Object to leading questions.
[52—48]

The COURT.—The questions are leading.

Mr. WHEELER.—“Were they available” calls for the opinion and conclusion of the witness.

The COURT.—That is a conclusion also.

Mr. THATCHER.—(Q.) For what purpose did

(Testimony of David Taylor.)

you have the \$50,000 in bonds?

MR. WHEELER.—Objected to as calling for the opinion and conclusion of the witness. I submit what was said and what was done by the people who advanced the money would be the only possible proper evidence.

THE COURT.—I think it will ultimately come to that, Mr. Thatcher, that the witness will be compelled to tell from whom he received the money, and on what terms.

MR. THATCHER.—I am going to do that, if your Honor please; but when I started to make that showing, they objected on the ground it was hearsay, not made in their presence, and they had no opportunity of cross-examining the party.

THE COURT.—They have insisted now that it be done that way. I think you may ask the question, and we will see what the result is.

MR. THATCHER.—(Q.) Mr. Taylor, tell what arrangements you made with F. M. Taylor and D. R. C. Brown, or any one else, with reference to money, in carrying out this contract?

THE COURT.—In answering that question state what occurred, and what Mr. Taylor said when he gave you that money.

WITNESS.—Mr. Taylor gave me \$25,000 to use according to my best judgment.

THE COURT.—What did he say?

A. He gave me \$25,000, and said, "if you decide to go ahead with this deal and take this stock, I will

(Testimony of David Taylor.)

take \$25,000 of it. Mr. [53—49] Brown told me the same thing, only he did not give me the money; he said "If you need the money, you may call on it."

Mr. COOKE.—I would like to have the benefit of an exception to the ruling, on the ground it is hearsay as to us; it makes no difference what these arrangements were, his duty under the contract was to get the money, and whether he had this, that, or other kind of arrangement is immaterial.

The COURT.—Well, you don't object to his testimony that he got the money, but you object to any testimony as to what it was for. I don't quite understand the position of counsel.

Mr. COOKE.—My position is simply this: that he can show in any way that he sees fit that he has actually done the things that he agreed to do, but the detail of how he got the money, or any orders in regard to these different people, or whether there were strings on it or not, I don't conceive that is important; his contract is to borrow a certain amount of money; and if he can show by legal evidence, which is by the parties who agreed to put up the money, that they made this arrangement with him and agreed to put this up, that is all right; or if he had this money in the bank, he can show that; but for him to go into details of these transactions with these people, it seems to me that is a matter of hearsay.

Mr. WHEELER.—Your Honor, my position will

(Testimony of David Taylor.)

be made clear by my present motion. I now move to strike out the answers of the witness as to what was done and what was said, upon the ground that they are incompetent as failing to prove anything done under the contract. In other words, the way to get at a thing of this kind, where a man comes and says I have performed, as I understand the rule is this: In substance, you say what was said and done by you in your efforts to perform this contract? Thereupon the [54—50] witness says so and so. Now if the thing that he testifies to is not an act in performance of the contract, then opposing counsel can do as I do now, move to strike it out. This witness has said my father advanced to me \$25,000 in cash, and said if you conclude to go into this arrangement you may use this money, or words to that effect. Now that was not an unconditional subscription to this matter, but it was dependent entirely upon this witness' conclusion. Perhaps if the father had said, here is \$25,000, if you get subscriptions amounting to the whole amount I then will go in, it might remain in the record as evidence, but no, he does not say that; he says, if you go through the mental processes that make you conclude finally to go into this transaction, then you may count me in; that would not be an act in partial performance of the contract.

The COURT.—The motion is overruled.

Mr. WHEELER.—Under the former understanding, I take it we have an exception to the former ruling as well as to this one.

(Testimony of David Taylor.)

Mr. THATCHER.—(Q.) That was in Denver?

A. Yes.

Q. What did you do after that with this property?

A. I telegraphed to Mr. Jackson to start west from New York; just after he had started, after I had received word that he had left, I got the first assays on Mr. Bancroft's subsequent examination, which had just been made, Mr. Bancroft getting to Denver about that time.

Mr. COOKE.—Was that date fixed?

Mr. THATCHER.—(Q.) Did you fix that date; was that by telegram?

A. No, it was either by mail or over the telephone, by Mr. Watts in Boulder, later confirmed by certificates. That was I think, May 27th.

(At 4:30 P. M. an adjournment is taken until Wednesday, September 15th, at 10 o'clock A. M.)
[55—51]

Wednesday, September 15th, 1920,

Court convened, 10 o'clock A. M.

Direct Examination of Mr. DAVID TAYLOR,
Resumed.

Mr. THATCHER.—(Q.) Mr. Taylor, yesterday you testified that you received word that Mr. Jackson was on his way, and that after that you received the results of the assays of Mr. Bancroft's report over the phone or by letter; now after that what did you do? A. I discussed with Mr. Bancroft—

Q. No what did you do, not what you said.

(Testimony of David Taylor.)

A. Within a couple of days after that I started for Nevada.

Q. Where did you go?

A. I went to Lovelock, met Mr. Jackson, told Mr. Jackson that the—

Q. Never mind what you told Mr. Jackson.

A. After meeting Mr. Jackson I met Mr. Poole— Mr. Jackson and I met Mr. Poole on the street, and asked him if he wished to verify Mr. Bancroft's report on the mine; he said he would like to.

Q. Did you tell him what Mr. Bancroft's report was?

A. I did. He said it was impossible, that Mr. Bancroft must have been mistaken; we suggested that he had better check it up himself, and suggested that we go up to the mine that afternoon.

Q. Did you go to the mine that afternoon?

A. We went over to the office first, and they arranged to have a car meet us on the arrival of the noon train at Mill City.

Q. What office?

A. The office of the Nevada Humboldt Mines Company; Mr. Nenzel made the arrangements by telephone, Mr. Jackson, Mr. Poole and I went up to the mine that afternoon, drove up to the mine; we had various talks with Mr.—discussed conditions with Mr. Poole; on the way up Mr. Poole made the statement that if Mr. Bancroft was right—

[56—52]

Mr. WHEELER.—Just a minute. We ask that

(Testimony of David Taylor.)

any statements of Mr. Poole's be confined to Mr. Poole alone.

The COURT.—It is so ordered.

Mr. COOKE.—And the same as to the other.

Mr. THATCHER.—Go on.

WITNESS.—Am I to say what Mr. Poole said?

Q. Yes, go ahead.

A. Mr. Poole said that if Mr. Bancroft's report was right, that the foreman at the mine had lied to him, giving him wrong information; he then said, "When we get up there I wish you would take Mr. Jackson, take him away from the office, as I want to spend two hours with the foreman, and if I find that he has given me wrong information, I will knock his block off," or something of the kind.

Q. What else?

A. Mr. Jackson and I spent the afternoon, two hours of it, around the mill; I had been through before; about 5 o'clock we got back and had supper, and Mr. Poole went down the mine, taking Mr. Jackson and the foreman, Mr. Morrin.

Q. What date was that, Mr. Taylor, as near as you can remember?

A. May 29th, I think; May 29th or 30th.

Q. Have you a diary? A. Yes.

Q. Will that refresh your memory as to the dates? A. Yes.

A. (After examining diary) Saturday, May 31st.

Q. Mr. Morrin, Mr. Jackson and Mr. Poole went down the mine? A. They did.

(Testimony of David Taylor.)

Q. When did you next see them again?

A. I saw them again about two hours later, when they came out of the mine; they came up and went through the office—

Q. Wait a minute. When they came up out of the mine was there any conversation at that time?

A. There was.

Q. Who was present? [57—53]

A. Mr. Jackson, Mr. Poole and myself.

Q. What was said?

A. As soon as they came into the office I asked Mr. Poole if Mr. Bancroft was right; he replied "Bancroft is right, the foreman lied to me." We drove back then to Imlay, I think either Mill City, or Imlay, caught the Pacific Limited back to Lovelock, having previously telegraphed, or asked Mr. Goodin, one of the defendants, to meet us in Lovelock on the arrival of that train, and before leaving for San Francisco on the Overland. Mr. Goodin met us at the hotel, went up to our room; we told him what Mr. Bancroft's report as to the tonnage was, that instead of 60,000 tons or over, there was less than 20,000 tons blocked out, told him Mr. Poole had been down in the mine that afternoon.

Mr. COOKE.—We object to any conversation with Mr. Goodin, unless in the presence of the defendants.

Mr. THATCHER.—Mr. Goodin is a defendant, if the Court please.

(Testimony of David Taylor.)

Mr. WHEELER.—It can only bind Mr. Goodin.

The COURT.—It will be admitted as against Mr. Goodin.

WITNESS.—Mr. Goodin met us in the hotel, went up to our room, either Mr. Jackson's or mine, in the hotel; we told him instead of 60,000 tons developed, or over, there was less than 18,000 developed, that is, ore averaging 1.76 or 1.75 per cent WO₃. Mr. Goodin was very much surprised.

Mr. COOKE.—We object to that.

Mr. THATCHER.—Never mind whether Mr. Goodin was surprised.

A. Shall I state what Mr. Goodin said?

Q. No. Did you tell Mr. Goodin at that time anything about Mr. Poole having been up to the mine? A. I did.

Q. What did you tell him?

A. I told him exactly what had happened; Mr. Poole had gone to the mine, gone down into it, come back and said that Bancroft's report was right.

Q. From Lovelock where did you go? [58—54]

A. From Lovelock went to San Francisco; left Lovelock at 3 o'clock on the Overland Limited, that would be Sunday morning.

Q. Did you see any of the defendants in San Francisco?

A. Met them all during the next week.

Q. Did you meet all of them?

A. No, I don't mean all of them—let's see; Mr. Murrish, Mr. Jones, Mr. Poole and Mr. Nenzel.

(Testimony of David Taylor.)

Q. Where did you meet them in San Francisco?

A. Met them at various times during the next week, Palace Hotel, mostly; at Mr. Thane's and Mr. Bayless' office.

Q. Can you repeat the subject of the conversation during that time?

Mr. WHEELER.—It should be confined to the persons present.

The COURT.—Name the persons present.

Mr. THATCHER.—(Q.) Can you give the actual words used at those conversations?

A. Not the actual words, no.

Q. Can you give the substance? A. I can.

Q. Tell as near as you can the substance of what took place after you met the defendants, or any of them, in San Francisco, and tell who was present at each meeting, if you can.

A. We arrived in San Francisco Sunday afternoon; the next morning went to Mr. Bayless' office; we told Mr. Bayless that we were not going through with the contract on account of—

Mr. COOKE.—Just a moment. You say you told Mr. Bayless? A. I did.

Mr. COOKE.—Object to that as hearsay.

Mr. THATCHER.—I think that may be stricken out as hearsay.

Q. Tell what was said by you in the presence of the defendants, or what the defendants said; tell all the conversations that took place in the presence of the defendants.

(Testimony of David Taylor.)

A. Well, Monday morning Mr. Murrish, Mr. Jones, Mr. Nenzel and [59—55] Mr. Poole came to Mr. Bayless' office, where I was with Mr. Bayless and Mr. Jackson; Mr. Jackson did the talking for me as my attorney. Mr. Jackson stated to them,—gave them a general resume of the results of the examination, and asked them in the beginning to correct him if he made any misstatements; he then proceeded and said this mine was represented to contain 60,000 tons of commercial ore; the report showed that it contained less than 20,000 tons; “my client raised money to make these loans, representing that it was—the mine had the 60,000 tons blocked out; he could not very well put his money or his friends, money into a mine that has 20,000 tons blocked out, when it was obtained to go through with one that had 60,000; we are willing, however, to rearrange the loan on a sum basis, by which my client is protected, and suggest the following proposition, to put up about”—

Mr. WHEELER.—That is objected to as incompetent, irrelevant and immaterial; it is of no consequence what proposition may have been made; that whatever may be the rights of the parties, depended upon what took place prior to this time, and any suggestion the witness might have made as to what he was willing to do on a different basis cannot be binding upon the defendants, or any or either of them.

(Testimony of David Taylor.)

Mr. THATCHER.—Does counsel object merely to the word “willing?”

Mr. WHEELER.—No, my objection goes to any evidence of any proposition of any kind that you made, that was in any manner different from the contract.

Mr. THATCHER.—Well, our statement on that is this, if the Court please, and our theory of the case is this; that where two men enter into a contract for the performance of certain things, and one of them falsely, fraudulently, or without fraud—I mean [60—56] without willful fraud, misrepresents the facts, that the other party may demand the performance of the contract, with compensation for deficiency in either the quality, quantity, or the thing to be sold, or that which is the subject of the contract; and we are going to show at this time with reference to this matter that Mr. Taylor then offered to advance \$85,000, 10,000 to be used for developing the mine, and \$75,000 to be used by the corporation for the payment of its credit.

The COURT.—This objection to the introduction of testimony rests practically on the same grounds as the one that was made yesterday, as to misrepresentations, and I think I will let the whole matter go in, and pass on it later.

Mr. WHEELER.—Your Honor, it does not rest in my mind on the same ground, and perhaps you will let me state the difference.

(Argument.)

(Testimony of David Taylor.)

The COURT.—I understand your point, and I think I shall allow the testimony in. It is allowed simply as showing what he offered to do, and of course the Chancellor will determine later whether he was at all times ready to do equity or not. I think that is one of the issues in the case; he has alleged that he was at all times ready to do equity, and that has been denied. The remainder of the testimony, as to what the defendants said or did, or whether they accepted or rejected this proposition, will be passed on later. I have serious doubts about that.

Mr. THATCHER.—(Q.) Was the offer which you made at that time or which was made on your behalf by Mr. Jackson, afterwards incorporated into a writing? A. It was.

Q. I call your attention to a paper, and ask you if that is the writing? (Hands to witness.)

A. It is. I should like to correct my last answer.
[61—57]

Q. Just a minute. Who prepared this?

A. Mr. Jackson.

Q. And was it prepared after the conferences and conversations which you have related?

A. It was.

Q. Was there any modification made of this? Take a look at that, and find out whether or not any modification, change, or addition was made to that afterward, if you know?

Mr. WHEELER.—Yes, there was an addition made

(Testimony of David Taylor.)

to that agreement, as I understand it, that it should not be made effective, the offer of the tentative agreement, unless ninety per cent of the creditors should consent thereto.

WITNESS.—I should say that is substantially it.

Mr. THATCHER.—There were some changes besides this?

A. There may have been some legal questions, or legal protections, which Mr. Jackson thought necessary to put in, I don't remember; those were the essential terms of the agreement we offered.

Mr. THATCHER.—We offer this in evidence.

Mr. WHEELER.—Objected to as incomplete, it appearing that before it was finally presented an addition or addenda was made to it.

Mr. THATCHER.—The objection is good. I will ask that it be marked for identification.

(The agreement is marked Plaintiff's Exhibit No. 17 for identification.)

Mr. THATCHER.—(Q.) Mr. Taylor, after this instrument which you have identified, was prepared, what was done with it, if you know?

A. It was submitted to Mr. Murrish, Mr. Poole and Mr. Nenzel.

Q. Do you recollect when it was submitted?

A. It was submitted a Friday afternoon, and Friday evening it was put in their mail box at the Palace Hotel, by agreement; it was put in Mr. Poole's box, I forget whether Mr. Nenzel and Mr. [62—58] Murrish, there were two copies put in two of their three boxes at the Palace Hotel.

(Testimony of David Taylor.)

Q. Do you know whether they ever saw it or not? A. They did.

Mr. WHEELER.—I think the order of the proof should be followed, the instrument proved and the Court pass upon it, before we question further what was done with it. It becomes utterly immaterial unless the document is admitted in evidence.

Mr. THATCHER.—I cannot prove it all at once. I don't want to withdraw this witness and put on another one to show what the differences were; I will follow it up.

Mr WHEELER.—Has counsel the addenda? If counsel has not perhaps I can assist him.

Mr. THATCHER.—I have some addenda here, and Mr. Jackson is looking them up.

The COURT.—A copy was introduced before, was it not?

Mr. THATCHER.—Introduced in that form, in an affidavit made by Mr. Murrish, and my recollection is that it did not at that time contain the addenda; and I am going to show by another witness that is the condition it was in when it was presented by Mr. Taylor to them, without the addenda.

Q. That agreement as it stands, however, was the one which you deposited in Mr. Murrish's, or some of the defendant's boxes at the Hotel. A. Yes.

Q. Without any addendum at all?

A. So far as I know, without any addendums; that covers the essential points.

(Testimony of David Taylor.)

Q. When did you next see any of the defendants, and who?

A. Seven-thirty that evening at Mr. Bayless' office.

Q. Who was there?

A. Mr. Nenzel, Mr. Jackson and myself; Mr. Poole and Mr. Nenzel came over to Mr. Bayless' office.

Q. In Mr. Bayless' office who was present?
[63—59]

A. Mr. Poole, Mr. Nenzel, myself, Mr. Jackson and Mr. Bayless.

Q. Was Mr. Murrish there?

A. Mr. Murrish was not there.

Q. What was said at that time with reference to this contract?

Mr. WHEELER.—I renew the objection, this is confined to those present; that is the ruling, I take it, your Honor?

The COURT.—Yes, that will be the rule. Is that the only objection?

Mr. WHEELER.—Our objection heretofore urged to all of this, of course. I don't want to have to repeat the request that the matter be confined, right along. It is confined to those who are present, unless the Court shall otherwise rule at the moment.

The COURT.—That will be understood, unless something further occurs.

Mr. THATCHER.—(Q.) What was said at that time?

Mr. COOKE.—You asked about a contract.

(Testimony of David Taylor.)

What transaction do you refer to? If it refers to this proposed document, we object to it.

Mr. THATCHER.—This proposed document.

Mr. COOKE.—We object to it as assuming that it constitutes a contract.

Mr. THATCHER.—Your objection is good.

(Q.) After this meeting, after you had left a copy of this paper with the defendants, did you have a meeting with any of the defendants, and where, and who was present?

A. I did. With Mr. Nenzel and Mr. Poole in Mr. Bayless' office across the street from the Palace Hotel, seven-thirty Friday evening, at which interview Mr. Jackson, Mr. Bayless, Mr. Poole and Mr. Nenzel and myself were present.

Q. State what took place at that meeting and the conversations, if you can.

A. Mr. Poole and Mr. Nenzel—I have forgotten which one of them did the talking for the otherside—said “Your [64—60] proposition is satisfactory; Mr. Murrish does not care to make any changes in it; it will be submitted to the creditors tomorrow morning for their approval; we will ask them to accept it; we are convinced that is the best proposition that can be done, that we can get, and under the circumstances it is perfectly fair; we thank you for making it.

The COURT.—(Q.) Did you say Mr. Murrish was present at that meeting?

A. Mr. Murrish was not present, to the best of my knowledge.

(Testimony of David Taylor.)

Mr. THATCHER.—(Q.) Now, Mr. Taylor, at that time will you state, and give the facts, as to whether or not you were ready, able and willing to perform the conditions which are outlined in that paper?

Mr. WHEELER.—Objected as calling for the opinion and conclusion of the witness.

The COURT.—I will allow the question.

Mr. WHEELER.—Let me add the general objection that it is incompetent, irrelevant and immaterial.

WITNESS.—Will you give the question again?
(The reporter reads the question.)

A. I was.

Mr. THATCHER.—State the facts.

Mr. COOKE.—I object to that; the witness is interrogated with reference to conditions of some paper that is not before the Court.

The COURT.—I think the objection is good.

Mr. THATCHER.—We offer the paper in evidence.

Mr. COOKE.—We object to it for the reason that it affirmatively appears that there was some other paper, termed an addendum or addenda, and made a part of it, and the two should go together, or in the absence of the one satisfactorily explained.
[65—61]

Mr. WHEELER.—With reference to Exhibit 17 for identification, for the purpose of the record.

Mr. THATCHER.—I think, if the Court please, the witness has testified that this is the paper,

(Testimony of David Taylor.)

and if there were addenda, he had no recollection as to what they were; but this is the paper that was left with the defendants in his testimony.

Mr. WHEELER.—It does not appear that this is the final form of the paper on that night; it appears there had been certain addenda to it prior to this conference.

The COURT.—Can you prove the exact document presented?

Mr. THATCHER.—He has testified that was the exact document presented.

The COURT.—I didn't understand it exactly that way; if he testifies positively, that is another matter.

Mr. THATCHER.—(Q.) Do you know whether that is the exact document which you presented?

A. There may possibly have been some addenda I didn't see; I don't believe there were because I think I should have been consulted and know it; the document that was presented then was typewritten just before it was taken over to the Palace Hotel; and I think if there had been any changes or any addenda of any kind I should have known it; but to the best of my knowledge and belief, that was the document that was presented, or a copy.

The COURT.—(Q.) Was it a copy of this document that was sent? A. I think it was, sir.

Q. Did you ever see the copy that was sent?

A. I saw the papers that were sent at the time.

Q. Did you read it? A. Yes.

Q. And do you know it was a copy of this?

(Testimony of David Taylor.)

A. I think it was, sir. [66—62]

Q. You think so, do you know?

Mr. THATCHER.—Look at it, read it, and tell us do you know whether that was a copy? (Hands paper to witness.)

A. That is, sir.

The COURT.—(Q.) Well, was that the document that was presented to Mr. Nenzel and Mr. Poole at that meeting—was this the document?

A. It was taken over to the hotel, put in their box at the hotel.

Q. There was no document of this character present at this meeting at which you say Mr. Nenzel, Mr. Poole and Mr. Jackson were present?

A. I think this copy probably was in our possession; they had seen the original, and come back and said they would accept it; whether he referred exactly to this copy or not I could not tell you; they said the terms of the original were satisfactory, and “we will accept it.”

Q. Is this a copy of that original?

A. It is, sir.

Q. An absolute copy of the original. You have no doubt about that? A. No, sir.

Q. The only document about which there can be any question is the copy transmitted to the Palace Hotel?

A. I say the original of this was transmitted to them at the Palace Hotel.

The COURT.—It will be admitted.

(Testimony of David Taylor.)

Mr. WHEELER.—May I cross-examine, your Honor?

The COURT.—Certainly.

Mr. WHEELER.—(Q.) I call your attention to Exhibit 17 for identification, and the fact that it is recited that the parties of the third part, and such creditors of the company as shall become parties hereto, you recall that it was anticipated that creditors would become parties to the contract, do you not? [67—63]

A. It seems to me creditors had to approve the contract.

Q. And do you not also recall that your counsel, Mr. Jackson, made an addition to that contract in these words: “This agreement shall not be effective unless and until creditors owning at least 95 per cent in amount of the claims set forth in schedule “A” in excess of \$500 shall become parties hereto?” A. I do not.

Q. You remember nothing being said upon that subject?

A. I remember several various discussions throughout the week upon it; I don’t remember whether that was put in by my counsel or not.

Q. Do you not remember it was understood that as a part of your offer there should be that provision?

A. No, sir, I can’t say that I do, because on that matter I would rely altogether on my counsel for deciding such matters.

Q. Was not your counsel’s advice at that time,

(Testimony of David Taylor.)

expressed in the presence of these other gentlemen as well as yourself, that there should be a provision to that effect?

A. I just told you that I didn't notice it.

Q. Did you not understand that your offer as actually made by you embraced that proposition, that 95 per cent of the creditors should agree on the terms that I have just read?

A. No, sir, I didn't notice it.

Q. What say?

A. No, sir, I don't know exactly; that is a matter I left entirely to my counsel's judgment.

Q. You know what your offer was, don't you?

A. I know what my offer was in general terms, to be put in proper legal shape to protect me, which I left to my counsel.

Q. Was that Exhibit 17 for identification, which you hold, or was that Exhibit 17 for identification, with the addendum to it, that 95 per cent of the creditors must agree?

A. I could not tell you that, sir; that is a copy of the proposition [68—64] that was taken over to them.

Q. So the fact is you really don't know whether that is the offer you actually made or not, do you?

A. That is not the fact.

Q. What is your answer?

A. That is not the fact.

Q. You then do know that was the offer as actually made, without any change or addendum, do you?

(Testimony of David Taylor.)

A. I told you that this is a copy of the offer that was taken over to the Palace Hotel.

Q. We quite understand that was a copy of the offer that was taken over to the Palace Hotel, but is that the offer that was actually made by you, or was that the offer that was actually made by you changed, with the condition that 95 per cent of the creditors must agree?

A. I could not tell you about that, sir.

Q. So you don't know really what offer you actually made?

A. I do know what offer I actually made.

Mr. WHEELER.—I submit, your Honor, the document is not sufficiently identified as being an offer actually made.

The COURT.—Well, as I understood his oral testimony with reference to that, when he made the proposition Mr. Poole said they were satisfied for themselves, but it must be submitted to the creditors, so I think I will allow this to go in; it goes so far, simply as his offer, but of course with that provision, that it would have to be submitted to the creditors for their approval.

Mr. WHEELER.—My point is that this is not the offer that the parties were referring to when they said it was satisfactory, but it was another and a different offer; and the offer that they said was satisfactory required the assessment of 95 per cent of the creditors, and that this witness has not identified this as the offer that was thus referred to when they said it was satisfactory. [69—65]

(Testimony of David Taylor.)

The COURT.—I think I will admit this subject to the objection. (The agreement marked Plaintiff's Exhibit 17 for identification is admitted and marked Plaintiff's Exhibit 17.)

Mr. WHEELER.—At this point we request opposing counsel to produce the addendum, or modification or addition to the document. Exhibit 17 for identification, prepared by Mr. Jackson, and made as a part of said offer. We would like it for inspection, if counsel will kindly give it to us.

Mr. THATCHER.—Well, we will hunt it up. I will show that by another witness.

Mr. WHEELER.—May I be permitted to ask the witness one further question, as to whether or not he saw this or knew anything of it.

Q. I show you a document just handed to me by your counsel upon the request to produce, beginning with the words: "This agreement made in several counterparts which together shall constitute one original. This agreement shall not be effective unless and until creditors owning at least 95 per cent of the claims set forth in schedule "A" in excess of \$500 shall be parties hereto," and containing several other paragraphs. Did you ever see that document before?

A. I could not tell you whether I have or not, sir; I have seen a good many documents, a good many drafts.

Q. Examine it and state whether it was not in truth a part of the offer which you say you made at that time to these parties at San Francisco.

(Testimony of David Taylor.)

A. I just told you I could not tell you.

Q. Will you please examine it and see if it will not recall to your mind what it was. (Witness examines document.)

A. I cannot make a positive statement; I can tell you what my impression is. [70—66]

Q. Give us your best belief.

A. My best belief is that these were notes and memorandum made by Mr. Jackson, probably during the evening or the next morning during the creditors' meeting, as little changes that would be finally made to the proposition; because Mr. Jackson stated it was so agreed by the defendants, and it was agreed that Mr. Jackson should give this proposition; this proposal was to be a draft subject to discussion as to details, and rearranged as to details to suit the creditors the next morning.

Q. You do recognize those matters as being statements your counsel required at that time?

A. I don't positively recognize them, no.

Q. Do you recall any of them, whether recognized by you to be a part of your offer?

A. I cannot recall whether the detailed wording of those were or not.

Q. Not the detail, but whether the substance was there or not?

A. I could not tell you that without taking a great deal of time, whether those paragraphs were covered in the original agreement.

Q. Please take the necessary time and tell us whether or not it was not your understanding that

(Testimony of David Taylor.)

the substance of the matters therein contained was a part of the offer made by you?

A. Whether it was a part of the offer made at that time or not, I do not know.

Q. I am not talking at that time; I am talking of the offer made by you?

A. The offer made by me at that time—the offer made at that time was subject to modification and agreement to suit the developments of the case, so as to be satisfactory to the creditors and to the other side and our side.

Q. Was not the document I have just shown to you, or its substance [71—67] or effect, all the matters therein set forth, understood by you to be a part and parcel of the offer made by you?

A. I told you I did not know whether it was at that time or not, eventually it would have been; I should say those are important points, whether they were covered originally, or whether points to be brought up for discussion when the final contract was drafted or not, I could not tell you.

Q. So the real fact is you cannot tell us whether or not those items were embraced in the offer made by you, which you say these gentlemen told you Mr. Murrish said he found no objection to?

A. What was the last part of the question? You say Mr. Murrish told me they would have no objection?

Q. No. These gentlemen told you Mr. Murrish said he found no objection to?

(Testimony of David Taylor.)

A. I would like to have the whole question.

(The reporter reads the question.)

A. I could not tell you whether they are in that contract, that draft of contract submitted to them before dinner or not, taken over to the hotel.

Mr. WHEELER.—I submit, your Honor, that the document is not sufficiently identified.

The COURT.—I think I shall admit it for what it is worth. It appears to me from the testimony of the witness, and what I gather from the conversation of counsel and the objection, that it contains the substantial offer that was made, but if anything was omitted it was some provisions with reference to future acceptance and approval, which must be had before the document could be considered as a contract.

(A short recess is taken at this time.)

Mr. THATCHER.—(Q.) Mr. Taylor, you testified that Mr. D. R. C. Brown and Mr. Frank M. Taylor discussed this deal with you; will [72—68] you state what took place in your conversation or discussions with Mr. F. M. Taylor?

A. I had a great many discussions with him.

Mr. WHEELER.—The objection heretofore made goes to this line, your Honor.

The COURT.—You will be permitted to answer to the extent of showing the terms on which the money, the \$25,000 was given.

Mr. THATCHER.—I know the question is rather indefinite, but I don't want to make it leading, and that is the only way I can ask it.

(Testimony of David Taylor.)

A. I had a number of discussions with Mr. F. M. Taylor at various times after the second of April, up till I came to San Francisco the first of June.

The COURT.—That was what you wanted to ask him, the terms on which the \$25,000 was given to Mr. Taylor?

Mr. THATCHER.—Yes, sir.

WITNESS.—The statement was always made by me that there was over 60,000 tons of ore blocked out averaging 1.75 per cent W03.

Mr. WHEELER.—I move to strike out the answer of that being one of the terms of the offer.

The COURT.—That may go out.

Mr. THATCHER.—Go ahead with the terms of the offer.

The terms of the offer were that there was to be \$150,000 worth of preferred stock—

The COURT.—Now, what does this question refer to?

Mr. THATCHER.—Giving the terms of the offer.

The COURT.—Of what offer?

Mr. THATCHER.—To Mr. F. M. Taylor.

The COURT.—Well, go on.

WITNESS.—There was to be \$150,000, or sufficient preferred stock to take care of their indebtedness, issued; that stock was to pay seven per cent, and to be redeemable out of the first earnings [73—69] of the company; with that stock there was to be given one and one-half shares of common stock as a bonus; that common stock was to be given by me to Mr. Taylor out of the sixty-

(Testimony of David Taylor.)

two per cent of the common stock which I was to secure for services. It was on these conditions that Mr. Taylor gave me the \$25,000.

Mr. THATCHER.—(Q.) At that time, or at any of those times, did you show Mr. Taylor the map, Plate 5 in Mr. Bancroft's report and the figures put on there by you from the information given you by Mr. Poole? A. I did.

Mr. COOKE.—Objected to as not being part of the offer on which these parties were going into this venture.

Mr. THATCHER.—Well, it is part of the representations that he made in making the offer.

Mr. COOKE.—We contend that is immaterial.

The COURT.—I think the objection is good.

Mr. THATCHER.—I take an exception, if your Honor please, to the ruling of the Court.

The COURT.—No, as I understand it, Mr. Thatcher, we are simply trying to ascertain, and that is all this testimony is offered for, whether he did procure \$25,000 from his father in fulfillment of his obligation under the contract of April the 2d.

Mr. THATCHER.—I think that is correct.

The COURT.—Now, whatever representations he made to his father to induce him to make that contract, it seems to me are immaterial it is just what the agreement was between him and his father.

Mr. THATCHER.—(Q.) Now, Mr. Taylor, did Mr. F. M. Taylor give you the \$25,000.

(Testimony of David Taylor.)

A. He did.

Q. With reference to Mr. Brown, tell what took place with reference to Mr. Brown. [74—70]

A. Exactly the same thing, except that Mr. Brown instead of giving me the \$10,000 said, "You can have it whenever you need it."

Q. Now what other money did you have for this deal?

A. On the 20th day of May or the first of June, I had over \$80,000 in cash in the New York Trust Company, my own property.

The COURT.—(Q.) What date was that?

A. It was the 31st day of May or the 1st of June. Whether that was shown on their statement at the end of the month, or whether I asked them to give me a statement a couple of days before the end of the month, I am not quite sure.

Mr. COOKE.—Excuse me, how much did you say, Mr. Taylor?

A. Approximately eighty thousand.

Q. And the name of that Trust Company?

A. The New York Trust Company.

Mr. THATCHER.—(Q.) Did you have any other moneys, or securities?

Mr. WHEELER.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—You may answer the question.

A. I also had an arrangement with the New York Trust Company to borrow \$40,000, subject to my call; the notes were signed, the security attached; the notes were in the possession of the New

(Testimony of David Taylor.)

York Trust Company; they were to be deposited to my credit any time I telegraphed them to do so.

Q. (Mr. THATCHER.) What security did you arrange for that loan?

A. It was about a hundred tons of scheelite concentrates.

Q. What other securities did you have besides that? A. As security for that note?

Q. No.

A. I had various other stocks which were salable on the [75—71] New York Stock Exchange any moment, could have been converted into probably \$90,000 cash.

Q. Were those stocks quick assets?

A. They were.

Mr. COOKE.—(Q.) Did I understand that this last item of bonds and securities you say you could quickly convert into cash, was a matter of about \$90,000 worth? A. Yes.

Q. That does not include this \$80,000 you had?

A. It does not.

Mr. THATCHER.—(Q.) Does it include the \$40,000 of the loan arranged for on scheelite concentrates? A. It does not.

Q. It is in addition to all of it? A. Yes, sir.

Mr. THATCHER.—You may cross-examine.

Cross-examination.

Mr. WHEELER.—(Q.) Were you ever the manager or superintendent of a mine in Cottonwood Canyon or Cottonwood Creek, Utah?

A. Was I ever what, sir?

(Testimony of David Taylor.)

Q. Manager or superintendent? A. I was not.

Q. Did you ever have anything to do with a mine in Cottonwood Creek, Utah?

A. I had general business charge of a lease in American Fork Canyon in Utah.

Q. When was that? A. About 1906 or 1907.

Q. How big a mine was it?

A. It wasn't any mine at all.

Q. What was it?

A. It was an alleged lead silver mine.

Q. How long did the mine operate or attempt to operate during the time that you were thus connected with it? A. Six months to a year.

Q. Did you go out and visit it often? A. No.

Q. How often?

A. Probably half a dozen times.

Q. Go into the workings of the mine?

A. I did. [76—72]

Q. How long have you been engaged in your present business?

A. Special rare metal business, you mean?

Q. Yes. A. Since about 1910 or 1911.

Q. That business has involved the buying and selling of ores?

A. Buying and selling of rare ores and rare metals, some zinc ores.

Q. Prior to that time did you have anything to do with the buying and selling of ores?

A. As a clerk in the office of Taylor & Brunton Sampling Company.

Q. Have you had anything to do with the owner-

(Testimony of David Taylor.)

ship, or owning mines at any time?

A. Outside of the Miller lease in American Fork Canyon, I have not, unless you call carnotite deposits mines.

Q. In the course of your business, where you have been for yourself or an employee of others, or connected with other persons, have you or the concerns that you have been connected with, had occasion to advance moneys as against ore in mines?

A. No, sir, not ore in mines.

Q. With the concentrates produced from mines?

A. With the concentrates and ores produced from mines, that has been one of our businesses, part of our business.

Q. Part of your business has consisted of making advances as against concentrates or ores, has it not?

A. Yes, when they are ready for shipment.

Q. When they are ready for shipment. Occasionally your advances have exceeded, have they not, the actual amount of ore or concentrates ready for shipment?

A. Not unless I have made a mistake in estimating the amount.

Q. In the course of your business have you ever had occasion to examine properties to ascertain whether or not it would be wise or well for your people to undertake arrangements with them whereby you would advance money for ores or concentrates? [77—73]

A. I have not; I have had examinations made by other people for such purposes.

(Testimony of David Taylor.)

Q. Have you, yourself, ever had examinations made? A. Yes.

Q. In how many instances?

A. I could not tell you exactly.

Q. Have you yourself ever visited any properties to look at them to see whether or not it would be wise or well for your concerns with which you were associated, to enter into arrangements for the advancing of money as against ores and concentrates?

A. Not as regards the mines themselves, the conditions in the mine.

Q. You have, however, gone into mines, and looked at them under such circumstances as I have mentioned, have you not?

A. Never with the idea of passing on their values, or judging their values in any way.

Q. You have, nevertheless, gone into and looked at them?

A. I have gone into and looked at a good many mines.

Q. So I thought. A great many, have you not?

A. No.

Q. By a good many, how many do you mean?

A. I could not tell you exactly.

Q. What kind and character of mines, what ores were they producing, or supposed to produce?

A. Well, I should say gold, silver, lead, zinc, copper, tungsten, carnotite and molybdenite; I don't remember any others, there may have been.

Q. Is this the first tungsten mine you ever vis-

(Testimony of David Taylor.)

ited, or had anything to do with, either for yourself or for others?

A. I rather think it is the first tungsten mine I ever visited; I could not be absolutely sure.

Q. Are you absolutely sure?

A. I could not be absolutely sure.

Q. What other tungsten mines have you ever seen, either before or after seeing this?

A. I just told you I could not be absolutely sure whether this was the first one or not. [78—74]

(By direction the reporter reads the question.)

A. I don't know that I have ever seen any others.

Q. Are you sure that you have never seen any other? A. I am not sure.

Q. You say that you always have relied upon experts in these matters; what experts have you used, name them; either you or the concerns with which you are associated.

A. I could not tell you the experts used by the concerns I was associated with; the only one that I remember having myself engaged for that work was the superintendent and manager of the mine in American Fork Canyon, his name was Tommy Fitzgerald; I think he was later out here with the Tonopah Belmont. With the carnotite mines I have relied a great deal on the opinion of the mine foreman or superintendent, a man named Thurber. I have been present at one or two examinations, one long examination made by Mr. Bancroft and Mr. George Wilson; I have been with Mr. George Wil-

(Testimony of David Taylor.)

son on several trips where he has examined properties.

Q. In the course of the business, either of yourself or that with which you have been connected, it has been customary, then, has it to send out an expert to examine the properties?

A. It has not been customary, no.

Q. It has not been unusual for you then to do it?

A. I should say it had been rather unusual.

Q. You have relied in special instances, you say, on experts?

A. In certain instances, yes, as to where it was a question of buying a mine or not.

Q. And instead of relying on yourself you have relied on the advice of experts before putting money in, have you not?

A. When I have put any money in, yes.

Q. You have never put any money in a mine without having an expert, first have you? [79—75]

A. It depends on whether you consider a carnotite claim a mine.

Q. Other than that, then, you have never?

A. I don't think so, no.

Q. At the time the contract was entered into, a copy of which is annexed to the complaint, marked Exhibit "B," and also the contract marked Exhibit "A," what, if anything, was said to you with regard to the amount of ore in sight by any party or parties to the contract; I am referring now to the contract of date, January, 1919?

A. May I have that question, please?

(Testimony of David Taylor.)

(The reporter reads the question.)

A. I don't remember that anything definite was said as to the amount of ore that was in sight. This is the January contract, is it?

Q. What representation, if any, was made to you as to the value of the property, which caused you to enter into that contract of January, 1919?

A. It was the opinion given me by Mr. Bancroft that it had the possibilities of making a great mine, of being very valuable.

Q. At the time of entering into that contract, you intended and announced, did you not, you were to have Mr. Bancroft make an examination of the property for you? A. Yes.

Q. And it was understood at that time that he was to make it, was it not? A. It was.

Q. Mr. Bancroft examined the property, you say, and then made a report to you? A. He did.

Q. Do you recall the date of the report, it is in evidence here?

A. I don't recall the exact date; it was the beginning of February, I should say, somewhere about the 7th or 10th.

Q. How did you receive that report?

A. I received that report by mail.

Q. How long after its date did you receive it?
[80—76]

A. I could not tell you exactly.

Q. Approximately?

A. Approximately, oh, maybe five or ten days.

Q. Within five or ten days? A. Yes.

(Testimony of David Taylor.)

Q. Do you know whether or not you had received that report as early as the first day of March.

A. I do.

Q. Had you received it as early as the 20th day of March?

A. I had received it on the—20th day of March?

Q. Yes.

A. I received it on the 20th day of February.

Q. You read the report, of course. A. I did.

Q. You knew what Mr. Bancroft had said with regard to the amount of ore in sight and its value in that report? A. Approximately, yes.

Q. After getting that report—or rather what was the condition of the tungsten market at the time of the receipt of that report? A. It was very poor.

Q. It continued very poor from that time forward, did it not?

A. Yes, certain slight changes.

Q. Slight changes. Were there any changes, either for the better or worse, intermediate between the 20th day of February and the 2d day of April, 1919?

A. There are changes every day in the tungsten market.

Q. During all of that period of time was there ever a time when the market was other than very bad, and discouraging?

A. Numerous times when it looked very encouraging for a day.

Q. Was the condition of the market any better or any worse on the 25th or 26th or 27th day of

(Testimony of David Taylor.)

February, than on the 20th, 1919.

A. Will you repeat the question, please.

(The reporter reads the question.)

A. I could not tell you.

Q. You at all times were informed as to the condition of the market, were you not; you kept in touch with that in the course of [81—77] your business?

A. Yes, I got the best information I could; I may have been mistaken at times.

Q. I hand you a letter dated February 24th, which has been received in evidence as Plaintiff's Exhibit 1, and ask you to examine it. (Hands to witness.) Are you familiar now with its contents?

A. Generally, yes.

Q. That is your signature? A. Yes.

Q. I call your attention to the first paragraph: "In view of the present tungsten situation, I do not believe there is the remotest chance of interesting anybody in the purchase of a property at a half million dollar price." Do you recall that statement? A. Yes.

Q. And it was the fact at that time that the tungsten situation was very bad?

A. In my opinion it was.

Q. "The best thing to do all around," you say here, "would be to close down." It was your opinion that the market was so bad that it was well to close down?

A. It depends upon what you call bad. There was a very large stock of imported tungsten in this

(Testimony of David Taylor.)

country, surplus war stock which had not been gotten rid of.

Q. It was your opinion the best thing to do at that time was to close down, was it not?

A. It was.

Q. Now I call your attention to the following paragraph of this letter: "I understand your present position will not allow you to do this without payment of \$170,000 debts. On your estimated production costs, you should realize a net profit of about \$55,000 from the money advanced by me on concentrates. This would leave a net balance, I figure, of about \$115,000 debts. If I can arrange to advance this money, would you consider the sale of the stock to me on a basis of twenty-eight cents per share," and so forth. It is the fact, is it not, that as early as February 24th [82—78] and after receiving Mr. Bancroft's report, you were making the suggestions contained in this letter, notwithstanding the known condition of the tungsten situation?

Mr. THATCHER.—I object, the letter speaks for itself.

The COURT.—You may answer the question.

Mr. WHEELER.—(Q.) I call your attention to the following paragraph in this letter; after the matters therein contained of your suggested offer are these words: "This means that you would be giving me a one-half interest in the mine for liquidating your present indebtedness." Do you recall that statement?

(Testimony of David Taylor.)

A. I recall something of that kind, yes.

Q. It was then, on the 24th day of February, after you had Mr. Bancroft's report of this mine, the fact, was it not, that you would have been willing to enter into an arrangement for liquidating this corporation's indebtedness upon a basis of fifty per cent of the stock of the corporation?

A. It seems to me you will find,—as I remember, you will find some additional conditions in that letter.

Q. I am asking the state of your mind.

A. It states that stock was to be paid for out of the earnings, of the profit.

Q. I understood it was to be paid for out of the earnings; the stock was to be paid for out of the mine, of the profit; but the effect of it was that you would get a one-half interest in the mine for liquidating their debts, present indebtedness.

Mr. THATCHER.—I object on the ground the letter is the best evidence of its contents.

Mr. WHEELER.—I will reframe that question then.

Q. Was it or was it not true at that time, to wit, February 24th, that you were willing to enter into an arrangement for the liquidating of the indebtedness of this corporation upon terms that would [83—79] mean that the stockholders would give you a one-half interest in the mine for so liquidating the indebtedness?

A. I don't think that was a formal offer; that was the suggestion of the basis of negotiations, and

(Testimony of David Taylor.)

rechanged; the change so modified the option that it would be best for me to go through with it.

Q. But if modified in that way, you were willing to go through with it?

A. I merely made that as a tentative proposition.

Q. It was your proposition, and if accepted you would be willing to go through with it, would you not?

A. I said I made it as a tentative proposition; I don't know whether I would be willing to go through with it or not.

Q. Can you not tell us whether you would or not?

A. I cannot.

Q. So with Mr. Bancroft's report before you, reporting only 8100 tones of ore in sight, you cannot tell us whether or not you were willing to undertake this matter upon a basis set forth in the letter of February 24, 1919?

A. I cannot exactly.

Q. You would not say whether you would or not?

A. I would not, sir.

Q. I hand you plaintiff's Exhibit 12, dated March 25, 1919, and I call your attention to the following passage: "The general basis of a readjustment which I have in mind is some basis on which cash be furnished for the liquidation of all the company's indebtedness plus my ability to acquire the stock, or 75% of it, on a basis of paying for the stock out of future earnings. I believe that the most one could count on a possible purchaser doing at present would be to furnish enough cash or

(Testimony of David Taylor.)

guarantee to clear up all the indebtedness." Were you or were you not willing at the time you wrote that letter, March 25, 1919, to enter into an arrangement whereby you would secure the furnishing of this money to liquidate the indebtedness upon a basis that you should receive 75 per cent of the stock? [84—80]

A. I could not tell you whether I was or not; those proposals were all tentative.

Q. At any rate you were favorably inclined at that time to such an arrangement?

A. I was favorably inclined to any equitable arrangement for the property, taking in all the conditions.

Q. So you will not now say whether or not you were willing to have done this for 75 per cent of the stock, and that there was nothing in the nature of a proposition from you, as you understood it, contained in this letter?

A. No binding proposition, no.

Q. At any rate, will you say that it was not the state of your mind at that time that you would have accepted an arrangement whereby you should furnish the money to liquidate the indebtedness, for 75 per cent of the stock of the corporation?

A. I will not make any statement as to just what was in my mind at that time, because I could not tell you, sir; that was before, as I remember, the additional tonnage of ore that was stated to have been developed.

Q. I hand you Plaintiff's Exhibit 10, purporting

(Testimony of David Taylor.)

to be a telegram from L. A. Friedman to you, dated March 25th, and particularly I call your attention to the following passages therefrom: "Conclude from your correspondence that you feel unable to exercise your present option owing to depressed tungsten market condition and therefore we must anticipate your possible failure to exercise your option. Suggest that you and Bancroft come here some time this week as all stockholders are here now and am sure you will find mine development fulfilling your most sanguine expectation and am confident that we could arrive at some modified arrangement as suggested in your correspondence." You recall receiving that telegram? (Hands to witness.) [85—81]

A. Yes.

Q. Did Mr. Friedman, or any of the defendants in this action, ever suggest to you that you should not visit the property with Mr. Bancroft, and examine it any time prior to the entry into this contract Exhibit "C," dated the 2d day of April, 1919?

A. That they ever suggested that I should not?

Q. Yes, or that you should not have Mr. Bancroft make the examination? A. They never did.

Q. So far as you are aware, then, they were willing at all times, and had invited you to make the examination with Mr. Bancroft?

A. I don't know that they had invited me to; they were willing for me to make it, so far as I know.

(Testimony of David Taylor.)

Q. You did not regard this as an invitation, then, to make the examination: "Suggest that you and Bancroft come here sometime this week as all stockholders are here now and am sure you will find mine development fulfilling your most sanguine expectation"?

A. I should say that was an invitation to come to Lovelock and negotiate a change in the form of contract.

Q. As a matter of fact, this was the one occasion in your life, was it not, when you entered into this contract of April 2d, that you intended to go into a transaction involving a mine, without having expert advice of your own?

A. I didn't necessarily; I considered that I had expert advice from the statements of Mr. Poole, in whom I had implicit confidence.

Q. But you had no intention whatever of having Mr. Bancroft examine the property?

A. I had no intention one way or the other at that time; the arrangements were made with Mr. Bancroft later on.

Q. Do you recall sending Plaintiff's Exhibit 11 to Mr. Friedman, containng the words, "Bancroft out of town impossible leave Denver at present."

A. Yes. [86—82]

Q. I call your attention again to Exhibit 12, the following statement: "Your day letter of the 24th reached me duly and I was sorry to have to wire you to-day that neither Bancroft nor I could come

(Testimony of David Taylor.)

to Lovelock at present. Bancroft has been away on an examination for ten days and will not return to Denver until April 1st. He leaves Denver about April 10th for a two-months examination, and during the ten days he is here he will be pretty busy preparing his report on the examination he is now making. I have some negotiations on for the purchase of a chemical plant in Denver, which will probably drag along until about the 10th of April, so that I cannot leave before then." Do you recall sending that letter?

A. I recall something of that kind; whether it is the exact wording I could not tell you unless I saw the letter.

Q. As I understand you, you had a talk with Mr. Murrish and Mr. Poole and Mr. Nenzel in Denver on the following dates, Sunday, the 30th day of March, 1919, Monday, the 31st, Tuesday, the first day of April, and Wednesday, the 2d; is that right?

A. Approximately; I could give you the exact date, if you wish me to, I have my diary.

Q. Give the exact dates on which you had conversation if not on those dates; if on those dates, say so.

A. Sunday, March 30th, 31st, April 1st and April 2d.

Q. 30th, 31st, the 1st and 2d? A. Yes, sir.

Q. Where did you see the gentlemen first on Sunday, the 30th day of March? A. In my office.

Q. Did you not go to the hotel first, and go with

(Testimony of David Taylor.)

them in the automobile from the hotel to your office? A. No, sir.

Q. What did you do on that day with the gentlemen, or how long were you with them? [87—83]

Mr. THATCHER.—Did you want to make an explanation?

A. To the best of my knowledge, I did not. I took them out various times during those dates in an automobile. As I remember that meeting, I was at home, at lunch when they got in, and one of them telephoned and said they would like to see me that afternoon; it is barely possible I might have stopped at the hotel and picked them up and taken them to my office; or I may have gone direct to my office, and had them come there and meet me.

Mr. WHEELER.—(Q.) How long were they in your office on that day?

A. I don't remember exactly; I should say a couple of hours, or an hour.

Q. At that time were all three of them present, or had one or two of them gone?

A. I think they were all present, because I think I took them home; I think I took them for a ride that afternoon; as I remember, I took Mr. Murrish up to his house, and dropped him, and took Mr. Poole and Mr. Nenzel for a ride.

Q. What was said on that day with reference to the proposed option?

A. There was a general discussion; I think various different terms were discussed, and various

(Testimony of David Taylor.)

different arrangements were discussed, *pro* and *con*,

Q. On that day what, if anything, was said or represented to you by any person with regard to the quantity of ore in the mine, that Sunday?

A. It was generally represented and stated that the conditions of the mine looked very good; whether specific figures given by Mr. Poole later, were mentioned at that time, I can't remember. I gave Mr. Poole the report, and asked him that night to put the definite figures on the report.

Q. Was anything at all said on that Sunday with regard to the quantity of ore in the mine? [88—84]

A. I could not tell you exactly, except the conditions of the mine looked very good.

Q. And that is all you recall was said on that day?

A. I don't recall particularly what was said on that day.

Q. On that day was anything said with regard to the proposed terms upon which you would take the option?

A. The various terms of various forms of option were discussed by both sides.

Q. Did you make any proposition on that day, setting forth the terms on which you would take an option?

A. I don't think any definite proposition was made.

Q. Did you make any proposition as to terms, definite or indefinite, and if so, what was it?

(Testimony of David Taylor.)

A. I think terms were suggested by me and suggested by them, but were left for discussion.

Q. What was said by you as to what you were willing to do?

A. I could not tell you exactly.

Q. Have you no recollection?

A. Nothing definite.

Q. Can you give us the substance of what you said as to what you were willing to do on that Sunday

A. I was willing in a general way at that time to make a contract according to the terms that were finally arranged.

Q. Did you say that?

A. I don't remember whether I did or not.

Q. Did you propose any other terms on that date?

A. I don't remember whether I proposed any terms that day.

Q. Did you suggest any terms or make any offer that day?

A. I presume we made various suggestions, as the other people did.

Q. Did Mr. Murrish say anything that day to you with regard to the condition of the mine?

A. I can't remember exactly. [89—85]

Q. Or Mr. Nenzel, did he say anything to you with regard to the condition of the mine?

A. I could not tell you.

Q. Did Mr. Poole say anything to you with regard to the condition of the mine?

(Testimony of David Taylor.)

A. I could not tell you exactly who said it; the general statement made was that the general conditions of the mine were very good; as to who made that statement, it presumably would have been Mr. Poole.

Mr. WHEELER.—I move to strike out it presumably would have been Mr. Poole.

The COURT.—It may go out.

Mr. WHEELER.—(Q.) What hour did you meet again after parting on Sunday, the 30th of March?

A. I could not tell you the hour.

Q. Where did you meet?

A. In my office.

Q. Was it in the forenoon or afternoon?

A. Forenoon.

Q. Who was present on that occasion?

A. Throughout the whole meeting, or at different times.

Q. Well, let us start at the beginning; Who was in the office when these gentlemen first came in?

A. I was.

Q. Anyone else?

A. I don't remember whether anybody else may have been or not.

Q. Were the three gentlemen together when they came in?

A. My impression is that Mr. Murrish came in later; whether Mr. Poole and Mr. Nenzel came in at the same time, or one was a few minutes behind the other, I don't know.

(Testimony of David Taylor.)

Q. Now please repeat what was said on that day in the course of your conversation; give the substance of it, the whole conversation, who was present at the time it was said, and who said it.

A. I could not tell you definitely who was present, or everything that was said. I think I first asked Mr. Poole if he had put the figures, showing recent developments, tonnage blocked out, values [90—86] and mine conditions, on the Bancroft map which I had given him the night before; Mr. Poole replied that he had not had opportunity to do so, or words to that effect; I then asked him to put them down there, give them to me at that time, which he did. Mr. Nenzel was there off and on, just when he came in, at what point of the conversation, I could not tell you.

Q. Had Mr. Murrish come in during any part of that conversation?

A. Mr. Murrish was there during some of it.

Q. Do you know what was said when Mr. Murrish was present? A. No.

Q. Can you mention anything that was said when Mr. Murrish was present?

A. No, because I don't know exactly when Mr. Murrish came in.

Q. A photostat had been made of some map, for the exhibit annexed to Mr. Bancroft's report seems to be such; did you have more than one photostat copy of that map?

A. Did I have more than one photostat copy?

(Testimony of David Taylor.)

Q. Yes.

A. I don't know whether I had any photostat copy. I don't know whether there were any photostat copies or not; I had that map and Mr. Bancroft's report, and I think at that time I had a duplicate report of Mr. Bancroft's.

Q. What was it that you gave in the shape of a report or map to Mr. Poole?

A. I gave Mr. Poole Mr. Bancroft's report intact.

Q. With the map annexed?

A. With everything in it that was in the original report.

Q. Including the photostat map?

A. I don't know whether it was a photostat map or not.

Q. Including the map that has been offered here in evidence. A. Yes.

Q. That identical map?

A. Yes, sir. [91—87]

Q. On the day that the conversation took place, Monday, the 31st, you say there was another map present?

A. I said that Mr. Poole had a roll of maps, big tall roll of maps of some kind.

Q. Was there any other copy, similar in whole or in part, to the map annexed to the report of Mr. Bancroft?

A. I had a duplicate of Mr. Bancroft's report, whether I had that at that time or not I do not know; every report I had of Mr. Bancroft's was

(Testimony of David Taylor.)

complete in every detail, and had all the maps.

Q. Did you have no extra map there, similar to the one annexed to Mr. Bancroft's report?

A. I just told you, sir, I don't know whether I had Mr. Bancroft's duplicate report or not.

Q. Apart from the duplicate report, did you have any other copy of that map? A. I did not.

Q. The figures and the lines upon that map were placed there by you, were they?

A. Which map are you speaking of?

Q. On the photograph map, the figures that were placed that day upon the photograph map were placed there by you? A. Yes, sir.

Q. Did Mr. Poole participate at all in any way in putting down a figure or in drafting a line.

A. You mean whether he actually put them upon the map?

Q. Yes.

A. No, he did not put anything on the map, as I remember it.

Q. Had you done any mapping, or made any addendum to any map on the preceding day, Sunday?

A. No, the map was given to Mr. Poole—I want to make one correction in my statement; on that map there was one—I think it was on level number two, one point at which I had put down approximately some fifty or sixty feet of development work, with assays that were [92—88] given me in a previous telegram by Mr. Nenzel; I think that was on the map when I gave it to Mr. Poole.

(Testimony of David Taylor.)

Q. So Mr. Poole himself put that on the map?

A. Mr. Poole didn't put anything on it.

Q. Oh, you put it on the map when you gave it to Mr. Poole, and that— A. (Intg.) Hold on.

Mr. THATCHER.—That is not his testimony.

Mr. WHEELER.—Please repeat your answer, I didn't get it.

A. My answer was that on that map, I think when I gave it to Mr. Poole, there was a pencil notation, which had been put on by me February 24th.

Mr. THATCHER.—(Q.) Could you tell from the map exactly? A. Yes.

Mr. WHEELER.—(Q.) Was any figuring done that day, Monday, or that day Sunday, in your presence or by you, in estimation of the amount of ore in the mine?

A. No amount of figuring; there may have been a little figuring done by Mr. Poole; he may have given me some figures to calculate; I may have done some multiplying or adding.

Q. Not what you might have done, I want the fact. Did you make some figures?

A. I made no figures of my own to put down on the map; Mr. Poole may have said multiply a certain amount to me.

Q. I am not asking you what you might have done, I am asking the fact. Did you put any figures on the map?

A. To make any figures of my own I did not; I

(Testimony of David Taylor.)

have never done any calculating of ore in a mine, because I don't know how to do it.

Q. So you did nothing in the way of calculations on that day Monday, or preceding it, Sunday?

A. I may have done some calculating.

Q. Please don't answer what you may have done; I want what you did [93—89] do; I want your recollection. A. I have given my recollection.

Q. That you did not?

A. I did not say that; I said I may have done it, or I may not have done it.

Q. In other words, you mean to say you are not positive? A. Yes.

Q. When you say you may have done this or that, you mean to say you are not positive whether you did or not, and will not say whether you did or not?

A. That is just what I mean, sir.

The COURT.—(Q.) Did you say you never had figured or calculated the amount of ore in a mine?

A. The amount of ore in a mine, because I am not competent to calculate it, I may have taken figures given me, and multiplied out areas into cubical contents.

Mr. WHEELER.—(Q.) Did you either on Sunday or Monday state in the presence of Mr. Nenzel, Mr. Murrish and Mr. Poole, that Mr. Bancroft's method of computation was by figuring out where he had two sides, or three sides; where he had three sides, an isosceles triangle?

(Testimony of David Taylor.)

A. I don't remember whether I did or not, Mr. Bancroft's method of calculation shows.

Q. Did you not proceed to describe what Mr. Bancroft's method was of arriving at the quantity of ore in a mine?

A. Whether I did or not, I do not know.

Q. You were familiar with his method, and you did know that he used figures, such as isosceles triangles, under some conditions, and such as squares or other figures under other conditions, did you not?

A. I didn't get the question.

Q. You knew Mr. Bancroft's methods of figuring, did you not?

A. Mr. Bancroft had told me what they were. [94—90]

Q. So you were not altogether ignorant of the method employed by Mr. Bancroft of computing the quantity of ore in this mine?

A. I was ignorant of sizing up how the figures were obtained.

Q. He told you how he got the figures and the methods of calculation he went through?

A. He did not tell me.

Q. He told you the methods of calculation he employed?

A. Anybody who has studied trigonometry could tell you.

Q. And that method was not too difficult for you to understand; you knew how to do it, did you not?

(Testimony of David Taylor.)

A. It is a question of multiplication and division.

(At 12:00 o'clock a recess is taken until 1:30 P. M.) [95—91]

Wednesday, September 15th, 1920.

After Recess. 1:30 P. M.

The COURT.—Take the stand, Mr. Taylor.

Mr. THATCHER.—If the Court please, with the consent of counsel, I would like to put Mr. Bayless on the stand, so he may return to San Francisco.

The COURT.—Very well

Testimony of W. S. Bayless, for Plaintiff.

Mr. W. S. BAYLESS, called as a witness on behalf of plaintiff, after being sworn, testified as follows:

Direct Examination by Mr. THATCHER.

Q. Your name is W. S. Bayless? A. Yes, sir.

Q. You reside in San Francisco? A. I do.

Q. What is your business or profession?

A. Lawyer.

Q. Do you know Mr. David Taylor? A. I do.

Q. Do you know Mr. Jackson? A. Yes, sir.

Q. Do you know any of the defendants in this case? A. Yes, sir.

Q. Who do you know?

A. Well, I know Mr. Poole, Mr. Nenzel, Mr. Murrish, I don't know whether Mr. Friedman is a defendant or not; I never have seen the pleadings in this case, so I don't know.

Q. You know Mr. Murrish and Mr. Nenzel?

(Testimony of W. S. Bayless.)

A. Yes, sir.

Q. And Mr. Poole? A. Yes, sir.

Q. Mr. Jones? A. Yes, sir.

Q. Did you meet any of these folks in San Francisco at any time? A. Yes, sir.

Q. Where and when?

A. Well, in San Francisco, about the 2d of June; it was on Monday, and for a number of days thereafter.

Q. June, 1919? A. Yes. [96—92]

Q. At that time were you attorney for Mr. Taylor? A. Yes.

Q. And acting as one of his counsel at that time?

A. Yes, sir.

Q. Will you state how many conversations or meetings there were between the parties?

A. I don't exactly know how many; they were rather frequent during that week. We first met on Monday, and had a number of conferences and meetings afternoons, and one in the evening during that week; just how many I don't remember.

Q. Were you present at the first conference that was held on Monday? A. Yes, sir.

Q. In your office? A. Yes, sir.

Q. State who was present?

A. Mr. Jackson, Mr. Taylor, Mr. Poole, Mr. Nenzel, and I think Mr. Murrish. I am not sure I remember the others.

Q. Will you state what took place, what conversation took place at that time?

A. Previous to—well, about nine o'clock or shortly

(Testimony of W. S. Bayless.)

thereafter, Monday morning, June 2d, Mr. Jackson and Mr. Taylor appeared at my office, and thereafter Mr. Nenzel and Mr. Poole, and possibly Mr. Murrish, I don't remember, also appeared; Mr. Jackson made a general statement; I am unable to quote his exact language.

Q. Do you know whether Mr. Jones was present at the first meeting?

A. I don't remember whether he was or not. He may have been.

Mr. COOKE.—C. H. Jones?

Mr. THATCHER.—One of the defendants. Go ahead, Mr. Bayless.

A. I cannot give you the exact language.

Q. Well, give the substance of it.

A. The substance of it was this: Mr. Jackson announced to those gentlemen mentioned that he represented Mr. Taylor, that he had come from New York and had met Mr. Taylor for the purpose of closing this up for Mr. Taylor; that in view of the fact the mine was not as represented, it was impossible for Mr. Taylor to take up [97—93] his option, however, Mr. Taylor was willing to take over the property on some different terms, that is, he would like to modify the option in some equitable way, and would like to discuss that proposition with them; he further mentioned that Mr. Taylor had performed all the services he had said he would perform in order to receive the compensation allowed him in this option, and was there for the

(Testimony of W. S. Bayless.)

purpose of making some different arrangement, if it could be agreed upon.

Q. Well, did Mr. Jackson at that time state the arrangement which Mr. Taylor was willing to make?

A. Mr. Jackson reviewed the whole situation generally, and stated what Mr. Taylor was willing to do.

Q. What did he state that Mr. Taylor was willing to do, if you recollect?

A. As I recollect, Mr. Taylor was willing to advance about \$75,000 in place, I think it was \$161,000, or \$160,000 which the debts amounted to; Mr. Taylor was willing to advance \$75,000, which money was to be used to pay all the company's obligations under \$500, and to be pro-rated among the creditors whose claims exceeded that amount; and he was also willing to advance about \$10,000, to be used as working capital, and for that he expected to receive, I think it was 62 per cent interest in the common stock of the company to be formed to operate the mine, and to have a lien on the ore blocked out as security for these advances; also of the right to operate the mill of the Tungsten Products Company, I think it is, during the period this arrangement was in force.

Q. Do you recall whether or not any further money was to be paid upon any condition of subsequent development of ores?

A. Yes, if that arrangement met with the approval of the company, the mine was to be operated, and if the operations developed sufficient commer-

(Testimony of W. S. Bayless.)

cial ore to justify it, Mr. Taylor would advance [98—94] them the further sum, I think, of about \$65,000, which would be used then to pay off all the creditors.

Q. Do you know what attitude, or statement the defendants present took or said with reference to this proposition? A. Yes, sir.

Q. What was it?

A. Mr. Poole I think was the spokesman, and from time to time as Mr. Jackson proceeded with the statement of fact, he would say, "Now if I am wrong I wish you gentlemen would correct me," particularly regarding these representations or misrepresentations; and Mr. Jackson would say, "Well, now, is not that so, Mr. Poole," and on a number of occasions Mr. Poole would say, "Yes, that is so," and he would speak to the other men present and ask them if that wasn't so, and they never directly replied except by nodding their heads to its being so.

Q. Do you recollect a meeting held on Friday night, or the night before the creditors' meeting?

A. Yes; in order to get the continuity of these events—

Q. Go ahead.

A. I should state we had frequent conferences on this subject for the purpose of discussing the new arrangement, and the gentlemen representing the company negotiated with Mr. Taylor and Mr. Jackson for the best deal they could make. Finally Mr. Jackson drew up a contract; we agreed verb-

(Testimony of W. S. Bayless.)

ally, I think about Wednesday on the terms of the new arrangement, then there was a question of reducing this verbal agreement in writing; some suggested Mr. Murrish draw up the contract; he suggested I do it; I suggested Mr. Jackson; everybody was willing for Mr. Jackson to draw the contract, and he retired to do so, and delivered the contract to one or the other of the men I have mentioned some time on Friday, the following Friday; they looked over the contract, and we agreed to meet in my office at seven-thirty Friday evening. My recollection is when we met those present were Mr. Jackson, Mr. [99—95] Taylor, Mr. Poole, Mr. Nenzel; I don't think either Mr. Murrish or Mr. Jones came over to my office at that time. Mr. Jackson asked Mr. Poole what he thought of the contract; Mr. Poole said he had no changes to make; that it was a hard bargain from their point of view, but in view of the existing conditions they could do no better; they were satisfied with the contract, had no modifications or suggestions to offer. Mr. Jackson told them not to hesitate to suggest changes, because the draft he had submitted was merely a tentative draft, and that he himself had a number of suggestions that he would like to make. Mr. Poole said, "That is all right, we will take the contract as it stands, provided our creditors will permit us to sign it"; he says, "We have called a meeting of the creditors, as you know; the creditors will meet on Saturday morning, tomorrow morning; we will ask the creditors to approve of this contract; if they do we will sign it up."

(Testimony of W. S. Bayless.)

My recollection is we all shook hands, and disbursed to meet following the creditors' meeting the next day.

Q. Did you go to the creditors' meeting?

A. Yes, I went to the creditors' meeting.

Q. Did you go as Mr. Taylor's attorney at that meeting?

A. No, Mr. Taylor wasn't invited to be present, neither was Mr. Jackson; a friend of mine, Percy Pettigrew, had a claim against the company, I think, and he was out of town and asked me to look after his interest, so I received a notice as Pettigrew's representative to appear at the creditors' meeting, or to be present at the creditors' meeting; I was there representing a creditor.

Q. Do you recollect whether or not Mr. Poole was present at the creditors' meeting?

A. Yes, sir, I recollect.

Q. Was Mr. R. Nenzel present?

A. Yes, Mr. Nenzel, Mr. Poole and Mr. Murrish.
[100—96]

Q. Do you recollect whether or not Mr. Goodin was present? A. Yes, he was there.

Q. Do you recall whether or not Mr. Jones was present at that meeting?

A. I don't remember whether he was there or not.

Q. Do you know whether or not Mr. Hinch or Mr. Twigg, Mr. Friedman or Lena J. Friedman were present?

A. No, I know Mr. Friedman wasn't there; Mrs.

(Testimony of W. S. Bayless.)

Friedman wasn't there; I don't know the other people.

Q. Did Mr. Poole, Mr. Murrish, or Mr. Nenzel, or Mr. Goodin ask the creditors to enter into this contract, or approve it? A. No, sir.

Q. What did they do?

A. They asked the creditors, in substance, to extend payment of their indebtedness for their various claims, saying that if the creditors would give them time, they could work the mine, pay off all the claims in full, and they would not be under the necessity of making this contract with Mr. Taylor.

Mr. THATCHER.—You may cross-examine.

Cross-examination.

Mr. WHEELER.—(Q.) At this creditors' meeting was any document presented? A. Yes, sir.

Q. Was it read in whole or in part?

A. Yes, sir, in part.

Q. When they got to a certain point in that reading was anything said by any of the creditors?

A. Yes, sir.

Q. What?

A. I would not pretend to say just the exact language.

Q. Don't say it in the exact language, give us the substance of it.

A. A number of the creditors got up and announced that they considered the bargain unfair, and they would stand by the company, would extend payment for their various claims, and were not in favor of— [101—97]

(Testimony of W. S. Bayless.)

Q. (Intg.) By the contract, what contract do you refer to?

A. To the contract read by Mr. Poole, and I think by Mr. Murrish; the contract which Mr. Jackson had submitted to them.

Q. Do you mean a contract that had been previously made and actually entered into, or do you mean this draft contract? A. This draft contract.

Q. Proceed, please; what did the creditors say?

A. I think I told you about all.

Q. In other words, they declined to enter into that contract?

A. The creditors took the position that they would extend the time, and were not in favor of the company entering into this engagement.

Q. On the day that the contract was drafted—

A. (Intg.) I beg your pardon, if you will permit me, I will make an explanation right there. When this contract was read, it was read in such a way that the creditors got the impression it was a much unfairer contract than it was.

Mr. WHEELER.—I move to strike that out as volunteered.

The COURT.—That may go out.

Mr. WHEELER.—(Q) Did the creditors, or any of them, so far as you know, ever assent to that contract, or proposed contract?

A. No, on the contrary, none of the creditors, as far as I know, ever assented to it.

Q. The contract that was presented on that occasion was what contract; was it Exhibit 17 just as

(Testimony of W. S. Bayless.)

it appears, or was it Exhibit 17 with certain modifications which had been proposed by Mr. Jackson?

A. I don't know your exhibits in this case. I saw the draft offered in evidence this morning. It is the paper which was placed in evidence during Mr. Taylor's testimony this morning.

Q. It is the same paper, yes. When did you first see that paper [102—98] Mr. Bayless, I now hand you; I am referring to a document not yet identified otherwise that as beginning, "This agreement made in several counterparts, which together shall constitute one original."

Mr. THATCHER.—I object to the use of the instrument, or any reference to it, on the ground it is not yet in evidence.

The COURT.—He may identify it if he can.

WITNESS.—Is this the paper Mr. Taylor was testifying about?

Mr. WHEELER.—Yes, the one exhibited to him this morning.

A. I have not seen it for over a year. Yes, I think this is the one.

Q. Was that present at the creditors' meeting?

A. Yes, this draft drawn by Mr. Taylor, submitted to Mr. Nenzel and Mr. Poole, was partially read at the creditors' meeting; I don't think all of it was.

Q. I am asking if the draft of the contract, together with the items that you have just identified, were offered at the creditors' meeting, and were a part

(Testimony of W. S. Bayless.)
of the offer that was then before the creditors, whether it was all read or not?

A. Well, I just mentioned—

Mr. THATCHER.—The paper itself is in evidence.

The COURT.—He can't ask as to the contents of that document until it is admitted, but he can ascertain whether that was the document which was present.

Mr. WHEELER.—That is all I am seeking to do, your Honor.

WITNESS.—Yes, substantially this is it; there may be some changes in it; my recollection is that the document submitted to the creditors was complete in itself, and didn't have any corrections or modifications attached.

Q. Then you say that Mr. Jackson had said that he wanted certain modifications; that the draft was only tentative; that he had said [103—99] that at a meeting in your office? A. Yes.

Q. And did he present the modifications that he desired in written form?

A. He may have, I don't recollect; I haven't any clear recollection on that point. My recollection is, as I have mentioned, that Mr. Poole said he had no corrections to make, they would accept the contract as it stood, and would sign it if the creditors approved; and Mr. Jackson didn't then hand Mr. Poole his suggested corrections.

Q. You saw the suggestions at that time, though, did you not?

(Testimony of W. S. Bayless.)

A. At that time, or before, or afterwards, I am not clear.

Q. You are clear, however, that among Mr. Jackson's suggested corrections was a provision that at least 95 per cent of the creditors of the corporation must agree, are you not?

A. No, I haven't any clear recollection at this time; I saw that memorandum this morning.

Q. And you had seen that memorandum before, about a year ago, as I understood you?

A. I probably had, but I have no recollection of that.

Q. So really the fact is that you can't tell us what the precise instrument was that was presented to these gentlemen in your office?

A. Yes, I can tell you.

Q. Well, then you can tell us whether or not it was accompanied by Mr. Jackson's proposed modification, involving the question of the consent of 95 per cent of the stockholders, can you?

A. I don't recollect those modifications.

Q. Then you can't tell me whether or not it contained that provision, can you, or was accompanied by that provision?

A. No, I can't, I can't tell you that.

Q. And you can't tell whether the document presented to the creditors [104—100] contained that provision, or was accompanied by that provision, can you? A. No, for the reason—

Q. I just asked the fact? A. No, that is true.

(Testimony of W. S. Bayless.)

Q. You were employed to go to Lovelock, weren't you, in the course of this transaction? A. Yes.

Q. You went there? A. Yes.

Q. Along in May? A. Yes.

Q. Were you employed through an oral conversation, or did the employment come to you through a telegraphic communication?

A. Through a telegram from Mr. B. L. Thane.

Q. Were you employed by Mr. Thane alone, or were you employed by him and Mr. Taylor?

A. No, I was paid eventually for my services by Mr. Taylor; Mr. Thane and Mr. Taylor were in New York; I didn't know Mr. Taylor at that time.

Q. But you acted for him in the matter, and you so understood at the time you were rendering services, did you not?

A. It wasn't quite clear who I was acting for at that time; I merely got a telegram from Mr. Thane asking me if I would go over and examine the title.

Q. Have you the original of that telegram?

A. I think I have somewhere in my files.

Q. Is it with you here? A. I think so.

Q. Will you please search for it now, and identify it; I refer to telegram dated the 14th day of May, 1919.

Mr. THATCHER.—I have a copy of it right here. (Witness searches his files.)

Mr. WHEELER.—(Q.) Haven't you the original?

A. The file is very voluminous; I have not been

(Testimony of W. S. Bayless.)

able to locate it in just hurriedly going over it.
[105—101]

Q. Have you nothing to indicate telegrams received May 14, 1919, or dated that day?

A. My file is a little out of order right now. Here is a substantial copy of it; I think it is substantially that. (Hands to counsel.)

Q. I hand you what purports to be copy of telegram dated May 14, 1919, and ask you if that is a copy of the original of a telegram received by you on or about said date?

A. I am reasonably certain that is substantially the same as the original.

Q. And that is the telegram under which you entered the employ which was subsequently paid for by Mr. Taylor? A. It is.

Mr. WHEELER.—We ask that it be marked our Exhibit “A” for identification.

(Telegram dated May 14, 1919, is marked Defendants’ Exhibit “A” for identification.)

Mr. WHEELER.—I understand any objection on the ground that the original is not produced of Exhibit “A” for identification, is waived?

Mr. THATCHER.—Yes. I don’t know whether I will object to it at all if you want to put it in; the matter is purely confidential, but if you want to, put it in.

Mr. WHEELER.—As long as the witness has been put on the stand out of order, we thought proper to have it identified at this time.

(Testimony of W. S. Bayless.)

Mr. THATCHER.—We will admit that is a copy of the telegram sent by Mr. Thane to Mr. Bayless.

Mr. WHEELER.—That is all.

Redirect Examination.

Mr. THATCHER.—(Q.) I call your attention to plaintiff's Exhibit 17, and ask if you ever saw that before. (Hands to witness.)

A. That is the draft of the agreement prepared by Mr. Jackson, [106—102] and submitted to Mr. Nenzel and Mr. Poole.

Q. Do you know whether or not that particular copy was your office copy, sent by you to me?

A. No, I don't recognize it as that; I remember sending you one.

Q. You haven't any copy in your files at the present time, have you, or do you know?

A. I don't think I have; I think I asked you to send this back, and you didn't do it.

Q. Now is this the contract that was read before the creditors' meeting?

A. Yes, that is the contract.

Q. Was all of this read? A. No.

Q. How much of it was read, if you recollect?

A. I can't say.

Mr. COOKE.—What paper are you referring to?

Mr. THATCHER.—Plaintiff's Exhibit 17.

WITNESS.—I don't know just how much was read.

Q. In what way was it read, and by whom?

A. Mr. Poole read the contract.

(Testimony of W. S. Bayless.)

Q. Before reading the contract, or as he read it, did he make any comments upon the contract?

A. Yes.

Q. What did he say?

A. I don't recollect his exact language.

Q. Can you give the substance of it?

A. I don't think I could give all of the substance, but he outlined the position of himself and his associates and his company, who he claimed to represent; in this connection he stated that the agreement was a very hard bargain, that he and his associates didn't wish to sign it, but would do so if the creditors insisted; and he informed them that this was the contract Mr. Taylor wished to make, and read them parts of it.

Q. Did he at that time, or any of the other defendants who were there present, endeavor to persuade the creditors to sign or to consent to that contract?

Mr. COOKE.—I object to that; I think he should state what [107—103] was said.

The COURT.—I think the objection is good.

Mr. THATCHER.—(Q.) Did he at any time during that time say anything to the creditors there present, which in substance and effect, urged the creditors to consent to the contract?

Mr. WHEELER.—Same objection; leading and suggestive.

The COURT.—I will sustain the objection.

Mr. THATCHER.—(Q.) What, if anything, was said by Mr. Poole or Mr. Murrish, or Mr. Nenzel,

(Testimony of W. S. Bayless.)

or any of the other defendants present at that meeting asking the creditors to consent to the execution of this contract? A. Nothing.

Q. Did they or any of them, the defendants, at any time during that meeting, ask or request the creditors to consent to the signing of that agreement? A. No, sir.

Mr. THATCHER.—That is all.

Mr. WHEELER.—That is all. [108—104]

Cross-examination of Mr. DAVID TAYLOR Resumed.

Mr. WHEELER.—(Q.) Mr. Taylor, coming back to the meeting of Monday, the 31st day of March, 1919, in your office; at that meeting you say that certain figures were read off to you, and certain lines and figures were placed by you upon a map here offered in evidence in your behalf. I now hand you said map, the same being a part of Plaintiff's Exhibit 15, and ask you to point out to the Court just what lines upon that map were placed there on that occasion by you. I am talking about lines now, not about figures.

A. That dotted line from the bottom of the shaft below level number 4 to the farthest extension of the northeast level number 2; the line from that point leading directly up to the level number one; the line from that point leading back to the point of the farthest ink figure on the map of level number 2.

Mr. THATCHER.—(Q.) Level number 2 or level number 3?

(Testimony of David Taylor.)

A. Back to this point (indicating), level number 2; the line leading from the bottom of the shaft up to about the middle of the southwest station of level number 2; line leading from the surface on the southwest side down to the southwestern extension of level number 2; whether the extension of level number one was put in at that time or not, I can't tell; if it was pencilled, it was. I think the extension of level number one was put in at that time.

Mr. WHEELER.—(Q.) Have you now given us all of the lines that were put in at that time by you, while Mr. Poole was talking to you on Monday, the 31st day of March, 1919, as you say?

A. I am not sure, sir, I will tell you in just a minute. I think the extension of the upper tunnel from a point which shows the end of an ink line some hundred odd feet northeast, was put in at that time. With the exception of two lines showing from 60 or 70 feet somewhere on the southwestern side of level number 2, all of [109—105] these pencil lines were put in at that time.

Q. When was the last group of pencil lines referred to by you, which were not put in at that time, put in?

A. I think they were put in by me on receipt of a telegram from Mr. Nenzel on February 24th, 1919; the date is above there.

Q. Were the ore bodies computed in your presence by Mr. Poole on that occasion?

A. I don't think they were; Mr. Poole gave me

(Testimony of David Taylor.)

the figures; some of them he made figures, and some he did not.

Q. Did you figure anything at that time?

A. I don't think I did, sir; I might have figured some cubical contents of given areas.

Q. Just what do you claim was said to you about there being 60,000 tons of ore in sight?

A. The figures put down on these different blocks were given to me as the tonnage of commercial ore represented within these blocks at that time.

Q. Within what blocks?

A. Figures 42,728 represent the tonnage of commercial ore stated to me to exist between this line from the bottom of the shaft, to this point on level number 2, southwest, below level number 2, and within the northeast limit of level number 2, back to the bottom of the shaft.

Q. Now then, roughly speaking, or rather accurately speaking, ore within the angle formed by the two pencil lines drawn from the pencil line indicating the bottom of the shaft, was the area in which it was represented to you, you say, that there was 60,000 tons of ore? A. No, sir.

Q. Where?

A. I said 42,728, as represented to me there.

Q. What else or where else was other ore than that represented to you as being in the mine?

A. 9250 tons was represented to me as being in this block up here. [110—106]

Q. By "this block up here" you mean in the

(Testimony of David Taylor.)

extreme northeast portion of the map, indicated by the representation there of the surface line, as level number one extended?

A. The extreme southwestern.

Q. We will call it block "M." Block "M" was represented to you as containing some ore?

A. Yes, sir.

Q. The figures being there represented; and what was the other block?

A. There was a block "N" represented contained 4200 tons.

Q. Now turning to this portion in block "M," you understood that the line above the figure "M" indicated the surface of the ground, didn't you?

A. Yes, sir.

Q. You understood also that the line at the bottom represented level number one extended, didn't you? A. Yes, sir.

Q. And you knew, did you not, that it was not intended to be represented to you that there were any workings in that portion of the ground, other than there represented upon the map?

A. Not within the ground, not within that portion.

Q. And so you understood Mr. Poole as telling you that he knew definitely from the data upon this map that there was that amount of ore in that portion of the mine?

The COURT.—That is in "M"?

Mr. WHEELER.—In "M."

(Testimony of David Taylor.)

A. Yes, sir.

Q. And you supposed that it was possible for a man to know that definitely with workings no greater in extent than there represented on the map?

A. Mr. Poole stated to me that the entire surface outcrop averaged two per cent, from that point to that point, he stated that that averaged three-quarters of a per cent; he calculated or gave me the figures as being included within those limits. [111—107]

Q. You didn't understand that he could see into that ground any better than you could, did you?

A. No.

Q. Or that he knew any more of the contents of that ground, other than he surmised to exist there, other than such information that he had?

A. I presumed Mr. Poole understood from an engineering standpoint how to calculate ores within certain blocks.

Q. You knew what the data was upon which he made his estimate, didn't you?

A. I knew the data was on that map; whether he had any other estimate or not, I didn't know.

Q. You didn't suppose there were any holes in the ground, any shafts, levels, or anything else, other than shown on the map, did you? A. No.

Q. Now the same thing with regard to Exhibit "N"; did you suppose there were any other workings in the mine, any other development work than appeared there?

(Testimony of David Taylor.)

A. Not then appeared on the map, no, sir; with the exception of a stope in which it has been stated very good or rich ore had been taken out.

Q. Then with reference to "E," "D," and all of the rest within the triangle, which you say was represented to you as containing 42,728 tons of ore, did you suppose there were any other or different workings or development in the mine, than is there represented?

A. Not then as shown on the map, no sir.

Q. You believed that from such information as Mr. Poole had, that in stating to you, as you say he stated, that there was 60,000 tons of ore in sight, that he was giving you his best opinion?

A. I supposed he was stating the conditions of the mine.

Q. You didn't suppose, did you, that he had a knowledge as to what was in that block of ore, or that he could have any accurate knowledge from the data that you knew he then had, in view of the extent [112—108] of the development of the mine?

A. I supposed Mr. Poole knew what he was talking about when he made statements to me as an engineer.

Q. You supposed he could see into the ground, and knew under those conditions as to how much ore was in sight, did you? A. No.

Q. You supposed then, did you not, that you were merely getting his opinion, based upon such de-

(Testimony of David Taylor.)

velopment as then existed, as to how many tons would probably be there? A. Yes.

Q. And that was all you did expect to get from Mr. Poole on that point, wasn't it? A. Yes.

Q. Do you know the difference between fire assays and panning, and estimates based thereon, on so-called pan assays?

A. I don't know what you call a pan assay, no; I assume you mean panning?

Q. Ever hear the phrase pan assay?

A. Never before to-day.

Q. Never before to-day?

A. Never before you just used it, to the best of my knowledge.

Q. Did anybody ever tell you that any fire assays had been made in this mine, or of any of its ore, other than your own expert, Mr. Bancroft?

Mr. THATCHER.—I object as not cross-examination.

Mr. WHEELER.—I submit that all goes to the general knowledge of this witness.

The COURT.—I will allow the question. I suppose it goes to his knowledge of the condition of the mine?

Mr. WHEELER.—Exactly, and the basis of representations.

The COURT.—Do you wish to limit it to any date?

Mr. WHEELER.—(Q.) At any time before the 2d day of April, 1919, had any party to this action

(Testimony of David Taylor.)

ever told you that any fire assays had been made of the ore in this mine? [113—109]

A. I don't recollect ever having been told so.

Q. Did anybody ever tell you that any chemical analysis had been made of the ore in this mine?

A. I don't know whether they ever told me specifically so, no.

Q. Did anybody ever tell you of the pannings that had been made in the different levels or works? A. No.

Q. Nothing was ever said on that subject?

A. Nothing that I recollect specifically as to how the values would reach.

Q. Anything said about Ben Morron taking pannings in the mine?

Mr. THATCHER.—Is this confined prior to April 2d?

Mr. WHEELER.—Prior to April 2d.

A. I don't recollect that anything was ever told me to that effect.

Q. Do you know that it was the practice in the mine to pan and make estimates of the ore, from panning? A. I did not.

Q. You never heard that from any source?

A. I don't recollect it.

Q. Now just what, in addition to reading off these figures, did Mr. Poole say to you at the time you say this conversation took place on the 31st day of March, 1919?

A. He gave me the figures; I think there were

(Testimony of David Taylor.)

some figures also on the map, showing some widths and some other data, which you asked me about just now.

Q. Did he, as a matter of fact, express any opinion whatever to you? A. He did.

Q. What did he say?

A. He told me very positively that there was over 60,000 tons of ore developed in the mine, which would average over 1.75 per cent tungstic acid.

Q. That that was his opinion?

A. It was his statement.

Q. I asked you a moment ago if he ever told you what his opinion was? [114—110]

Mr. THATCHER.—Object on the ground it is incompetent, irrellevant and immaterial, not cross-examination; that it does not call for, nor did any of the direct examination call for the question of Mr. Poole's opinion as to the mine. Mr. Taylor has testified as to what the conversations were; if counsel desires to ask as to conversations, that is a different proposition, but the question here is not one of opinion, but of conversations and representations.

Mr. WHEELER.—I am asking the question in such form that it calls for the answer as to whether or not the man said in substance that his opinion was so and so.

The COURT.—You may repeat any conversation you had which would indicate whether it was an opinion or a positive statement.

(Testimony of David Taylor.)

A. His statement was very positive it was over 60,000 tons.

The COURT.—That is your opinion, repeat now just what was said.

A. I could not repeat his exact words, your Honor.

Q. Give it as near as you can.

A. Well, I don't know that I can say anything further than that he stated, said there was, his words would have been these: "There are 60,000 tons of ore that will average over 1.75 per cent, developed in the mine." The opinion was expressed by all of them that that probably was not the maximum amount of ore, that additional ore could be expected, but that that was proven and developed at that time.

Mr. WHEELER.—(Q.) What did you understand him to mean when he said that ore was developed at that time?

A. I understood that he meant ore that was blocked out.

Q. What do you mean by blocked out?

A. Well, I should say was proven in the mine, that you could count on that tonnage of ore being there definitely.

Q. Was proven that it is probable or definite?
[115—111]

A. I should say blocked out would mean definite.

Q. So notwithstanding the map that was shown you, the extent of the workings, and such experi-

(Testimony of David Taylor.)

ence in mining matters as you had had up to that time, you understood that it was represented to you that 60,000 tons of ore was blocked out in that mine? A. Yes, sir.

Q. Were the words "blocked out" used?

A. It might have been developed.

Q. Was it represented to you on how many sides development had taken place; was anything said about that?

A. It seems to me the map shows how many sides those blocks were proven. I think that the statements in that connection were made to the effect that this block of ore, pointing to the map, is developed on four sides, this on three sides, and this on two sides, if anything of that kind was said.

Q. But you are not sure whether any thing was said or not on that subject?

A. As to the different sides on which ore bodies were developed, I mean.

Q. At any rate, you wish it understood that you implicitly believed from that moment forward that it was an assured fact, and not a mere matter of Mr. Poole's opinion, that that quantity of ore, to wit, 60,000 tons, of the assay value of an average of 1.75, was surely in that mine? A. Yes, sir.

Q. You believed that so implicitly that from the minute forward you stood ready to advance your own money, and pay it without any further examination of the property, didn't you?

(Testimony of David Taylor.)

A. I wasn't willing to advance it at that time, no.

Q. Why?

A. Because it wasn't necessary, time wasn't ripe yet for it; that was the 2d of April, this didn't call for putting up the money until the middle of June; I wanted to make further investigation into the tungsten market, also to see whether I could get [116—112] somebody else to put up or not.

Q. But you never dreamed of having any further investigation of that property made before you personally should put up a cent, did you?

A. It might have been considered.

Q. You say it might have been, was it?

A. I could not tell you.

Q. Would you at that moment, without any further investigation of that property, have put up any money whatever?

A. I made a distinct offer to Mr. Thane three or four weeks after that to put up \$75,000, right then and there, if he would put up the balance to go through with the deal.

Q. Without any investigation whatever?

A. Yes.

Q. You never contemplated then at any time having any other or further investigation made of that property, either before you put up any money or let anybody else put up any money?

A. Why, afterwards I did, because various people insisted on it.

(Testimony of David Taylor.)

Q. But so far as you were concerned there never was a doubt in your mind from that minute forward that there were precisely 60,000 tons of ore of that value developed in that mine?

A. I said that there was at least 60,000 tons developed, not precisely 60,000 tons.

(By direction the reporter reads the question.)

A. Not precisely 60,000 tons; there were more than 60,000 tons.

Q. How much more than 60,000 tons?

A. It was not stated.

Q. How much more did you believe were there at that time?

A. I didn't have any idea, or know—no, I change that; the original plan of development, there were certain proposed developments the statement was made, I think by Mr. Bancroft some time before, that if certain proposed developments, if certain proposed work should prove to be in ore, that there would be a large additional tonnage developed; my impression is that if all the work proposed [117—113] by him should have been in ore, there would have been some 150,000 to 160,000 tons blocked out.

Q. But from that moment forward the question did not enter your mind—your mind—but that there was at least 60,000 tons there?

A. No, it did not; I had implicit confidence in Mr. Poole's statement.

Q. You believed that implicitly; and from that

(Testimony of David Taylor.)

moment forward you were prepared to represent to any person whom you invited in that there were 60,000 tons of ore there?

A. I was prepared to, and did so.

Q. It didn't occur to you to try to represent that there was at least 25 or 30, or 35 or 40 thousand tons there, did it?

A. I represented on several occasions that there was at least forty to forty-three thousand, writing in explanation that there was additional, bringing it up to from sixty to seventy thousand tons.

Q. Did you ever plan to represent to anybody after you talked with Mr. Poole on this occasion that there were twenty-five to thirty-five thousand tons surely there? A. No, sir.

Q. Before the parties left Denver did you have any conversation with Mr. Murrish wherein you endeavored to persuade Mr. Murrish that if he acquiesced in the proposed agreement upon the terms finally agreed upon, that he would come out as well by the transaction as he had hoped to come out under the original option?

A. I think I explained that, tried to explain that, and show that to both Mr. Nenzel, Murrish and Mr. Poole.

Q. When?

A. When the terms were under discussion.

Q. When?

A. Whether that was the first day or second or third day, I don't know. I think that was the basis on which the contract was made. [118—114]

(Testimony of David Taylor.)

Q. Yes, it was done after Mr. Murrish had demurred about going into the contract, wasn't it?

A. I think it was made before the contract was agreed, when I was trying to explain to them this seemed a fair proposition, and why it seemed fair to me.

Q. Search your memory and tell me on what date you used those arguments.

A. I could not tell you exactly.

Q. Was it on Monday, the 31st, or on Sunday, the 30th, perhaps? A. I could not tell you, sir.

Q. Did you make any figures or draft any prospectus at that time which you exhibited to Mr. Murrish, and if so have you it?

A. I didn't draft any prospectus at that time; I drafted several prospectuses before then.

Q. Did you at that time draft one in which you endeavored to persuade Mr. Murrish to come in on the transaction?

A. I don't think so; I don't think I did; I may have arranged the prospectus that I had previously drafted.

Q. You say a prospectus which you had previously drafted; have you that?

A. No, sir, I don't think I have; I am not sure whether the prospectus had been previously drafted or not; I drafted several prospectuses during this general period.

Q. Was the prospectus referred to by you in type-writing? A. Yes.

(Testimony of David Taylor.)

Q. Did you draft any other prospectus or make any figures during this transaction, and exhibit the same to Mr. Murrish for the purpose of persuading him to come in and sign the contract, showing him that he would profit by it?

A. That he would profit by it over and above the others?

Q. No.

A. I think I made various figures, worked out the business results, and probable results for all of it.

Q. Oh, you did? Now in working out those probable results, how [119—115] did you treat this item of 60,000 tons of ore in sight?

A. It was figured out as showing the results to be gained from mining that 60,000 tons with the costs as given in Mr. Bancroft's report, and with the possible or probable market price of the resultant product.

Q. And accepting the statement that there were 60,000 tons, you used that statement in trying to persuade Mr. Murrish, did you?

A. I don't think I did, sir.

Q. Did you use the 60,000 tons in any way as a basis for figures which you presented to Mr. Murrish? A. I could not tell you, sir.

Q. Search your memory, please. As a matter of fact, you tried to figure out with Mr. Murrish what profit there would be in the mine if he accepted your proposition, did you not, and what profit therefore, would come to him as a stockholder?

(Testimony of David Taylor.)

A. My impression is now that I did give some such figures, and make some such figures, to show the profit or possible tonnage which would have been developed along the lines of the Bancroft development program, which involved some hundred and fifty to one hundred and sixty thousand tons.

Q. So that instead of using the 60,000 tons; you then used the higher development of 160,000?

A. I think I did, I am not absolutely sure of that.

Q. But you of course at no time used the figures of 25,000 or 30,000 or 35,000, either with Mr. Murrish or with anybody else, did you?

A. I am very sure I didn't, sir.

Q. Examine the document which I now hand you, consisting of page one, and on the back of it page 2, and the third page unnumbered, and state whether or not the words and figures are your handwriting?

A. Yes, sir, that is my handwriting.

Q. And the figures are yours?

A. They appear to be, sir. [120—116]

Q. When and where did you make those figures?

A. I do not know, sir; I should presume that they were probably made in my office during these conferences.

Q. Can you not state what use you made of them on that occasion?

A. I cannot, sir; I have completely forgotten any such figures.

Q. Exactly. I call your attention to the figures and words as follows—

(Testimony of David Taylor.)

Mr. THATCHER.—I would like to have the instrument in evidence.

Mr. WHEELER.—Certainly, in it goes. Mark it out Exhibit “B.” Perhaps the pages had better be called “B-1” and “B-2.”

(Document consisting of three pages, is marked Defendant’s Exhibit “B.”)

Mr. WHEELER.—(Q.) I call your attention to the following paragraph appearing on pencil page 2 of Exhibit “B”: “In order to make investment safe only necessary to show at 8.00 market 35400 tons of ore, 10.00 market 25,500 tons of ore.” I ask you if you recall writing that statement?

Mr. THATCHER.—I object on the ground the instrument itself is the best evidence, if it is competent. It appears there, and he testified that he made it.

The COURT.—He can be asked if he recollects that.

A. I don’t specifically recollect making that statement, but it is my handwriting.

Mr. WHEELER.—(Q.) After examining that document, do you still say that on that occasion you believed implicitly that there were 60,000 tons of ore in that mine, as a matter of fact and not as a mere matter of Mr. Poole’s estimate?

A. I do, sir.

Q. Same explanation with reference to this I am going to ask you for, and see if it will recall your recollection; I call your attention to page one:

(Testimony of David Taylor.)

“Incorporation 1,500,000.” Do you remember anything about that? [121—117]

A. I remember nothing whatever of the details of this, sir, except that it is all in my handwriting.

Q. And you don't remember when you wrote it, you don't remember where you wrote it, you don't remember what use you made of it, you don't remember whether you presented it to Mr. Murrish or not?

A. I don't remember when it was presented to Mr. Murrish. I do remember what use I made of similar figures to other people.

Q. Do you remember what use you made of this on that occasion to Mr. Murrish, Mr. Poole, or Mr. Nenzel, or to any or all of those gentlemen?

A. I don't specifically; I should say it was used to explain the different results to be arrived at on different markets of tungsten, on different tonnages of ore.

Q. And why Mr. Murrish would profit by the transaction, would you say that also, would that be the purpose?

A. No, I should say that it was probably—there was no proposition ever made by which Mr. Murrish should profit in any way any more than any of the others.

Q. I didn't say that; I say he should profit as a stockholder if he undertook this arrangement.

A. I should say that it is probable.

Q. But as a matter of fact you can't recall it,

(Testimony of David Taylor.)

you don't remember using it, and you don't remember writing it?

A. I remember in a general way making a lot of figures, showing different results, before our contract was made, and on different plans; I do not remember that specific paper.

Q. You don't remember on what day it was used?

A. No, sir.

Q. You don't remember whether you used it April 2d, just before the contract was signed; you don't remember whether you used it April 1st, the day before the contract was signed, March 30th, [122—118] March 31st, or at all, do you?

A. I do not, sir.

Q. If it was so used the whole matter has gone entirely from your mind?

A. It has, sir. If I were allowed to read that and study it thoroughly I might be able to say.

Q. I think if you can give us any definite information on that you are entitled to have it. (Hands paper to witness.)

A. I think I know what that was, sir, now.

Q. Give your explanation, please.

A. I think that was some figures, general estimates of results and proposed method of financing, on which the new contract was bases; there was some changes later made; the question of twenty-five or thirty-five thousand tons is preceded by this statement: "In order to make investment safe it is only necessary to show at eight dollar market 35,000 tons in mine, at ten dollar market, 25,500

(Testimony of David Taylor.)

tons.” There are a number of figures showing the basis of calculations.

Q. And the profits that would come upon those tonnages of ore?

A. Yes, the profits probably—

Q. To the stockholders; and those tonnages or ore, are not those figures designed for that purpose, didn't you—

A. (Intg.) Probably I did, as I should have been one of the stockholders.

Q. Now then, that you have seen it and examined it and recall that the figures were made by you in order to show the stockholders they would profit upon a basis of 25,000 or 35,000 tons, can you tell us just how you made use of this in connection with the negotiations or transactions on any of these days in Denver in March and April, 1919?

A. No, sir, except in the general way of discussing the business result. [123—119]

Q. Now it has been recalled to you, have you any clear or definite recollection as to whom you presented it, to whom you read it, and what was said on the subject?

A. Nothing absolutely clear and definite.

Q. Have you any recollection whatever, if you have none clear or definite?

A. I have a general recollection of discussing with Mr. Nenzel, Mr. Murrish and Mr. Poole the general situation, figures and results that appear to be given in that statement.

Q. And that was the basis upon which you

(Testimony of David Taylor.)

thought you would attempt to finance it, wasn't it?

A. It was the proposed basis, yes.

Q. And on that basis you were going to represent, were you not, that if there were 35,000 tons of ore on a certain basis, eight dollars; and 25,000 tons on a ten-dollar basis, that the advance of the money to pay the creditors would be safe?

A. Yes, sir.

Q. And also that the stockholders in the corporation, upon that basis would receive more than they would receive under the former contract, more than fifty cents per share, in other words?

A. I think that was on the basis of a hundred and fifty-seven or a hundred and sixty thousand tons in the mine.

Q. Then if you think that see if I can't correct you. Kindly examine the figures on page one, headed "Net profit to present owners"; do you recall those figures, and making them?

A. I don't recall them specifically, no, sir.

Q. But it is all in your handwriting?

A. All in my handwriting, yes, sir.

Mr. WHEELER.—It may all be considered read, I think.

Mr. THATCHER.—Yes.

Mr. WHEELER.—(Q.) Before this contract was signed, or rather, did you agree upon the terms tentatively on Monday, the 31st day of March, 1919? [124—120] A. No, we did not.

Q. But it was on that day you are very sure that you placed the figures and the lines upon the map

(Testimony of David Taylor.)

annexed to exhibit 15? A. Yes, sir.

Q. Did you meet again on that day, Monday?

A. I think we probably did; my remembrance is we met every morning and afternoon, and most of the evenings.

Q. Have you any recollection of what was said on any other occasion, on Monday, the 31st day of March?

A. Not specifically what was said at different times.

Q. Were any terms agreed upon by any person on that day, Monday the 31st?

A. Whether they were or not I am not absolutely sure; the terms were agreed upon as far as Mr. Nenzel and Mr. Poole were concerned, on a Tuesday evening, the day preceding the—Wednesday, I think it was, the day the contract was signed; at any rate, preceding the day on which the contract was to be drawn and signed. I went to Mr. Poole and Mr. Nenzel's room at the Brown Palace Hotel; my recollection is that we agreed to the terms at that time; that is, Mr. Nenzel and Mr. Poole did.

Q. By the terms you mean the terms as now set forth in Exhibit "C" attached to your complaint?

A. My impression is that the agreement at that time was sixty-five and thirty-five per cent, or some slight variation.

Q. Otherwise the terms were the same as were subsequently embodied in Exhibit "C"?

A. They were not the terms that were subsequently embodied; they were—

(Testimony of David Taylor.)

Q. (Intg.) Then Exhibit "C" was not agreed upon on the 31st day of March, in the evening, by Mr. Nenzel and Mr. Poole, was it?

A. The terms by which I got a little more than I did in the final contract were agreed to by Mr. Nenzel and Mr. Poole that evening; Mr. Murrish did not agree and the terms were changed the next morning to suit Mr. Murrish. [125—121]

Q. The next morning, April 2d, to suit Mr. Murrish? A. Yes.

Q. Did you have any conversation with Mr. Murrish on the evening of the 31st?

A. The 31st, that was Tuesday evening?

Q. Yes.

A. The evening before the contract was signed?

Q. Yes.

A. I had a conversation with Mr. Nenzel, Mr. Poole and Mr. Murrish in their room; I am not sure whether I had any conversation alone with Mr. Murrish or not.

Q. You now say that the terms were agreed to by some of those parties; were any of the terms subsequently embodied in the contract Exhibit "C," agreed to that night?

A. I think all the terms were agreed to that night, with the exception of the percentages.

Q. Also agreed to by Mr. Murrish that night?

A. With the exception of the percentages, I think they were. Mr. Murrish left, and I remember the statement made by Mr. Poole to Mr. Nenzel that Mr. Murrish would be all right the next morning,

(Testimony of David Taylor.)

and he would agree to it, and we need not worry.

Q. The next morning where did you meet?

A. In my office.

Q. What was said? All parties were present, I assume? A. Yes.

Q. Mr. Murrish, Mr. Nenzel and Mr. Poole?

A. Yes.

Q. What was said?

A. Why, in effect it was agreed that a contract should be drawn; I think I told Mr. Murrish that I would agree to take 62 per cent instead of 63 or 64 or 65; whatever it had been the night before.

Q. Did you then make any figures?

A. What sort of figures?

Q. Any figures on the profit that would come to Mr. Murrish if he accepted the matter on that basis?

A. I don't remember, sir, whether I did or not.

(A short recess is taken at this time.) [126—122]

Q. You had planned, had you not, while these gentlemen were still in Denver to go and visit the property? A. Yes.

Q. You had intended to visit the property before going to New York to attempt to make your flotation or obtain the money, had you not? A. I had.

Q. You expected to go to the property earlier than you did get there, didn't you?

A. I don't remember exactly.

Q. You had hoped that Mr. Bancroft would be able to be there in the course of a few days after the contract was made, had you not?

(Testimony of David Taylor.)

A. I don't remember, I don't think so; my impression is that Mr. Bancroft was engaged in another examination somewhere in Mexico or South America, or somewhere.

Q. One of the exhibits offered in evidence says he will be gone until April 10th, and you hoped he would be able to stop over on the way; do you recall that? A. I don't recall that specifically; no, sir.

Q. The first ten days in April?

A. I don't recall that specifically.

Q. It was your desire, however, from the beginning to have Mr. Bancroft look at the property again, wasn't it?

A. No specific desire; no, sir.

Q. It was not, you say?

A. No specific desire, no.

Q. It was your desire, however, wasn't it?

A. No specific desire; no, sir.

Q. I say it was a desire, however, was it not, on your part to have him look at the property, and you tried to get him to look at it before he went down to Mexico, didn't you?

A. I think I asked him whether he could meet me at Lovelock, as Mr. Friedman suggested; I may have telegraphed or written him and asked him if he could be there; I am not sure whether I did or not. [127—123]

Q. You did try to get him to stop over there on his way, before going to Mexico, to look at the property again, didn't you?

A. I may have tried to get him to stop over, not

(Testimony of David Taylor.)

specifically to look at the property, to stop over for a conference, as suggested by Mr. Friedman.

Q. Did you not after the 2d day of April endeavor to get Mr. Bancroft before he should start for Mexico, to go out and look at that property?

A. I do not remember, sir.

Q. You have no recollection on the subject?

A. No, sir.

Q. What, if anything, did you do intermediate to the time of your going to this property, and the 2d day of April, in the way of attempting to secure money with which to carry out the transaction?

A. I talked to Mr. F. M. Taylor and Mr. Brown, and several other people in Denver about it; I wrote some letters, one letter that I specifically remember, to the Crucible Steel Company, which was one of the largest consumers of tungsten, outlining the general proposition, and asking if they cared to go into it in some way.

Q. What was your occupation in the month of April, 1919?

A. My occupation during all this time has been buying and selling ores.

Q. Were you an officer of any corporation engaged in the business? A. I was.

Q. Was that an active concern, or a moribund concern? A. Practically dead at that time.

Q. Was it doing any business at all in the month of April, 1919?

A. It may have been doing some, it was doing very little.

(Testimony of David Taylor.)

Q. Were you doing any business for it?

A. Yes, all the business that was done by it was being done by me for it. [128—124]

Q. Really that was the name under which you were transacting business, wasn't it; the corporation was one in which you owned 95 per cent of the stock, wasn't it?

A. Yes, it was a corporation under which I was doing certain business; I was doing other business too.

Q. What other business were you engaged in during that month of April?

A. One thing I was trying to raise money for this tungsten proposition.

Q. What else?

A. I was also engaged in negotiating for the purchase of radium and vanadium plant in Denver.

Q. Was that a thing that took any time?

A. Yes.

Q. How much time did you devote to that in the month of April?

A. I don't know exactly; I had a number of conferences with different people about it.

Q. Did you spend any number of days at it?

A. That, and all the business that came in during that time, I could not tell you how much time I spent at one business and how much at another; the chief occupation at that time was trying to finance this tungsten mine.

Q. Now let us see, this is in the month of April before you had visited the property, and after the

(Testimony of David Taylor.)

2d day of April, just how many hours did you put in in that period of time, in trying to finance this transaction? A. I don't know, sir.

Q. You have told us what you did; how long did it take you to write the letters which you have told about?

A. I don't know exactly how long it took; I know it was a letter that was very thoughtful, that I tried to think out and work out before I wrote it, as I would any such letter.

Q. How many minutes or hours were taken up in the conversations that you had in that period of time? A. I don't know, sir. [129—125]

Q. What say? A. I don't know, sir.

Q. Give us an estimate, an accurate estimate, can't you?

A. I could not give you an accurate estimate at all; I was in my office during business hours practically all the time; how much time I spent on one thing and how much on another, I could not tell you; the chief thing I was working on during this time was this tungsten.

Q. Give us the length of the conversations which you had with the parties whom you say you approached? A. I could not give you the length.

Q. You have told us what you did in the period of time before you went out to visit the mine, haven't you?

A. I don't know whether I have or not.

Q. Very well. When you went out to visit the mine did you go into it? A. I did.

(Testimony of David Taylor.)

Q. Please describe just what you did in regard to the mine; did you go down the main shaft?

A. Yes.

Q. To the bottom?

A. Eventually I think I went to the bottom.

Q. Eventually to the bottom. Anyhow, beginning at the top, did you examine the surface?

A. We went down the mine first, and went through all the workings, so far as I know.

Q. Went through all the workings; who went with you?

A. Mr. Poole, and I think Mr. Morrin was with us all the time, I am not sure.

Q. Did you look at what was there presented in the mine? A. Yes.

Q. Did you ever see any tungsten ore before that time? A. I have seen various specimens.

Q. What was your purpose in going into that mine, anyhow? [130—126]

A. My purpose in going into the mine and visiting the mill was to be able to say to people to whom I talked in the East that I had seen the property, that I knew there was a mine there, and knew there was a mill there, and that it was a going concern, and look over the whole proposition from a general business standpoint.

Q. In other words, to back with your own impressions the representations which you proposed to make to them?

A. From a business standpoint, yes, sir.

Q. Did you take any samples at all?

(Testimony of David Taylor.)

A. No, sir.

Q. Did you take any specimens at all?

A. I may have taken one or two specimens, I don't know.

Q. Was any panning done in the mine while you were there? A. I don't remember any.

Q. Think about it, and then tell me?

A. I don't remember any.

Q. How much time did you spend in the mine?

A. I should say about three hours.

Q. So far as you know and now believe, you examined every part of the underground workings, didn't you?

A. I would not say I examined them, I went through them.

Q. Went through them for the purpose of looking at them, didn't you? A. Yes.

Q. Was anything said about the ore in the faces, as you examined them did you look at that?

A. Yes, I looked at every place they told me was ore; if they said this was ore, I looked at it.

Q. Did it look like ore to you?

A. I would not know whether it was ore or not.

Q. So then, you went on to New York directly, did you?

A. I went to Lovelock first, and then I went from there to New York. [131—127]

Q. Not stopping at Denver on the way?

A. No, sir.

Q. Now this trip that you took to New York of course was one that was based on your contract,

(Testimony of David Taylor.)

and solely for the purpose of trying to put the contract through, wasn't it? A. Yes, sir.

Q. And otherwise you would not have planned to go to New York except for this precise business of this contract?

A. I don't think at that time I would have.

Q. As a matter of fact isn't it true that before you ever made this contract you had planned definitely to go to New York in the latter part of April, and that your trip to New York was pursuant to that plan?

A. I don't think it was, no, sir. I had some interests in New York, Pennsylvania, and I had to go to New York very frequently. I should like to correct that statement, if I may. At that time there was two or three shipments, I have forgotten just the quantity, of scheelite concentrates, which I had from this mine, and on it I had advanced money, and which I was obligated to sell under the contract; the ore contract; at that time I think none of it had been sold, and I had been unable to sell some; and it is quite possible I planned to go to New York at that time, and go East in an endeavor to sell these concentrates.

Q. I call your attention to the following passage in Plaintiff's Exhibit 12, purporting to be a letter written by you to Mr. Friedman, dated March 25th, seven days before this contract, Exhibit "C," was made: "While in New York I found the president of one of the strongest banks quite interested in the general proposition and I believe that on some

(Testimony of David Taylor.)

modified form of option I could induce him to go ahead when I go East again, which will be the latter part of April." Do you recall that statement? A. Not specifically, no, sir. [132—128]

Q. Well, is it not the fact that regardless of this particular option, you intended to go to New York in the latter part of April, and that in truth you went there pursuant to that intent formed as early as March 25th, and not because of this contract dated April 2d? A. No, sir, it is not true.

Q. Then why did you make that statement in your letter?

A. I don't remember why that was made at that time; it was undoubtedly an expectation at that time to go East for some purpose.

Q. As a matter of fact at that time you did have business which you thought would require attention in New York the latter part of April; this is on March 25th you thought it?

A. I probably did if I wrote that letter.

Q. And what business was it?

A. The only business I remember of now was the general promotion of this mine and the sale of tungsten concentrates.

Q. As a matter of fact when you went to New York the latter part of April, you proceeded to sell those concentrates, or to negotiate with regard to them, didn't you?

A. I think they were all sold before I got East.

Q. You had something to do with the proposition

(Testimony of David Taylor.)

of selling concentrates while you were in New York, didn't you? A. Yes.

Q. And that was a part of the business that took you there, wasn't it?

A. I don't know whether it was specifically or not.

A. Well was it? A. I told you I don't know.

Q. At any rate when you got there you did transact business of that character, didn't you?

A. I tried to sell tungsten concentrates whenever I was in New York; it has been one of my businesses for many years.

Q. As a matter of fact, when you got there on that occasion you [133—129] did transact business of that character, selling concentrates?

A. I don't know whether I sold any concentrates at that time or not; I certainly tried to.

Q. Did you negotiate while in New York for the sale of concentrates or attempt to make arrangements for sales of that character?

A. I did whenever I was in New York.

Q. Will you say that was not the reason for your going to New York?

A. I will say I don't think it was specifically.

Q. In other words, wasn't that the business that took you there, and didn't the matter of this contract come in as an incident to that business, rather than the business of the contract take you there and the business of the concentrates come in as an incident? A. No, sir.

(Testimony of David Taylor.)

Q. So notwithstanding the fact that on March 25th you said you were going to New York the latter part of April, you now say the contract of April 2d was what took you there, and not this business outlined in your letter of March 25th?

A. I say they all might have been part of taking me there.

Q. Now when you got to New York did anybody there subscribe any real money?

A. Several people there agreed to take some.

Q. Did anybody subscribe any real money, which entered into any part or portion of the alleged money that you say you had afterwards ready to complete this transaction with? A. They did.

Q. How much money came into your hands in New York on that occasion? A. None.

Q. How much money was subscribed at any time by any person to go into this venture, not to loan you but to go into this venture?

A. Twenty-five thousand dollars.

Q. By whom? A. By Mr. Thane.

Q. Mr. Thane then agreed while you were in New York unconditionally [134—130] to go into this venture, did he?

A. No, sir. Mr. Thane insisted that the property be examined by Mr. Bancroft again.

Q. So then you had no unconditional subscription for \$25,000 from Mr. Thane, but it was on condition that Mr. Bancroft should first examine the property, was it? A. Yes.

(Testimony of David Taylor.)

Q. Did Mr. Thane ever put up any real money in your hands? A. No.

Q. Did that \$25,000 form part or portion of the money which you said you had available in the course of your direct examination? A. It did not.

Q. So then that was not a subscription that you used in any manner in making your alleged offer of performance, was it?

A. I was counting on that subscription, but I had enough money on hand to take care of that in case it didn't come. Mr. Thane was in New York on some other business, and telegraphed me the money would be available as soon as he got back to San Francisco, that he could not arrange it from New York; he told me he had had some talk with Mr. Poole, and that Mr. Poole had arranged that his associates would postpone payment of that \$25,000, if necessary; I did not rely on any payments being postponed on account of the creditors involved, and I arranged before leaving Denver to supply myself with the \$25,000 to make up Mr. Thane's payment, if it was not ready on time.

Q. I will come to that. While in New York all that was said by Mr. Thane was if Mr. Bancroft would examine the property and report favorably on it, that he then would come in for \$25,000; was that all of it?

A. Yes, that is all Mr. Thane agreed to do about subscriptions.

Q. And was it agreed at that time that Mr. Bancroft should examine [135—131] the property?

(Testimony of David Taylor.)

A. It was not.

Q. When was it first agreed that Mr. Bancroft should examine the property, at what date?

A. I cannot give you that exact date, about the 12th or 13th of May, when Mr. Thane telegraphed Mr. Bancroft and asked him to make the examination.

Q. That was while you were still in New York?

A. Yes.

Q. Then as early as the 12th or 13th day of May you had agreed that this examination should be made, is that right? A. Yes.

Q. And that you would pay for that?

A. Yes.

Q. And you did pay for it? A. I did.

Q. And it was an examination to be made for you? A. Yes.

Q. And the report to be made to you? A. Yes.

Q. And that was something that you arranged for, not in any way to satisfy yourself before advancing any moneys, because you were already satisfied, is that right?

A. I was satisfied, yes, when I went East.

Q. So that you were all ready to advance your money and carry the deal through, whether Mr. Thane came in or not, without any report from Mr. Bancroft?

A. Not after Mr. Bancroft had been engaged to make the report; naturally I wanted to see his results.

Q. No, but up to that moment?

(Testimony of David Taylor.)

A. Up to that moment, I should think.

Q. From the moment you engaged Mr. Bancroft to make the report you were not ready to come in on this proposition without further investigation, is that not true?

A. Naturally when I engage a man to make a report I want to see the result of his report.

Q. Exactly. Now up to that time what subscriptions had you obtained from any person or persons? [136—132]

A. I had obtained a subscription from Mr. F. M. Taylor for \$25,000, from Mr. D. R. C. Brown for either five or ten thousand, I am not sure whether the exact amount had been agreed upon before I left Denver or not.

Q. The first amount had not been paid in then before you left Denver, had it? A. It had not.

Q. So really nothing was paid in by any person until after your return from Denver, was it?

A. No, sir.

Q. And your return from Denver was not until after you had changed your mind, and come to the conclusion you must have Mr. Bancroft's report before going ahead, is not that so? A. Yes, sir.

Q. Mr. Brown had neither paid in five or ten thousand dollars then or at any time, had he?

A. He had not.

Q. So that all of the services that you claim to have performed and all of the expenses that you went to in this matter subsequent to the 12th or 13th day of May, were after you had determined

(Testimony of David Taylor.)

to have the representations which you say were made, verified by a report from Mr. Bancroft?

A. Yes, I am not sure whether it was the 12th or 13th day of May, or not.

Q. Not sure what?

A. Whether it was exactly the 12th or 13th of May that the arrangements with Mr. Bancroft was made.

Q. Is it not a fact that apart from this conversation that you have testified to about Mr. Thane and what he said he was willing to do, conditioned upon Mr. Bancroft's report, that you did not succeed in New York in getting anybody to come into the transaction?

A. That is not exactly true, no.

Q. Anything in New York, I said.

A. I got several people in New York who said they would probably [137—133] come in and take the preferred stock after the corporation had been formed according to the plans outlined.

Q. That was all that was said by them?

A. That was the only definite agreement or promise made to me.

Q. Is it not the fact that you tried to float this matter in New York, but that the people whom you dealt with demanded the control of the corporation before they would come in at all for any money, and so for that reason the whole matter fell through?

A. No, sir; that was the condition made by one person to whom I talked.

(Testimony of David Taylor.)

Q. Only one?

A. As far as I remember now, yes; the others were people whom I knew.

Q. I hand you a letter dated the 20th day of May, 1919, addressed to Mr. R. Nenzel, Secretary Nevada Humboldt Tungsten Mines Company, Lovelock, Nevada, signed David Taylor; is that your signature and did you send that letter to Mr. Nenzel? A. Yes, sir.

Mr. WHEELER.—We offer the letter in evidence, and ask that it be marked Defendants' Exhibit "C."

Mr. THATCHER.—No objection.

Mr. WHEELER.—Considered read.

(The letter dated May 20th, 1919, is marked Defendants' Exhibit "C.")

Q. Calling your attention to Defendants' Exhibit "C" to the following phrase: "Nobody in the east wanted to tackle the proposition unless they had control, and we were unwilling to give that up." Do you recall making that statement?

A. I do not particularly recall it, but if it is in the letter, I made it.

Q. Was it true or false? A. I don't know, sir.

Q. What was done with the \$25,000 which you say your father advanced? [138—134]

A. It was put in the bank.

Q. Where? A. New York Trust Company.

Q. By whom?

A. As I remember it was mailed to them by me for deposit.

(Testimony of David Taylor.)

Q. In whose name was the \$25,000 deposited?

A. In my own name.

Q. In your general account?

A. I have only one account there.

Q. And it was paid to that account in your name?

A. It was.

Q. On what day was it deposited?

A. I don't know, sir.

Mr. THATCHER.—Do you want a memorandum?

Mr. WHEELER.—If it will help you to give us the date?

(Witness examines paper.)

A. It was received by the New York Trust Company on May 31st.

Q. On May 31st. When did you father pay that to you?

A. It was paid within one or two days before it was mailed from Denver; I don't remember the exact date it was mailed.

Q. What became of that deposit; was it used by you for any purpose at any time, if so, when and what purpose?

A. It was not used by me.

Q. What did you do with it?

A. Gave it back to him.

Q. When did you give it back to your father?

A. I don't remember exactly; presumably not till after I went East, after these negotiations in San Francisco.

Q. You say presumably, do you know definitely?

(Testimony of David Taylor.)

A. No, I do not.

Q. By the way, it was along in June, about June 4th, that you left San Francisco, wasn't it, to go East?

A. I can tell you the exact date by referring to the diary.

Q. Consult it. (Witness examines diary.) [139—135]

A. I left San Francisco June 10th.

Q. Then you cannot tell us whether before leaving San Francisco on June 10th you had returned that \$25,000 to your father, can you?

A. I am very sure I didn't do it before I left San Francisco.

Q. That you did not before leaving San Francisco, or that you did?

A. That I did not before leaving San Francisco.

Q. Then how soon after returning to San Francisco did you return it to him, if you know?

A. I do not know.

Q. Have you nothing in your memorandum from which you can tell us or have you no other data by which you can tell us when you returned that money to your father?

A. The only way I could tell is by consulting my check-book, when I gave him a check for it.

Q. Have you your check-book here, or the stubs?

A. I have not.

Q. When your father gave you that money was anything said as to the terms under which he gave it to you?

(Testimony of David Taylor.)

A. It was originally given me on the basis of my presentation of the facts to him; when I left Denver after we had Mr. Bancroft's report, he told me that I could use that subscription if I chose to, if some modified form of option or arrangement were made, or went into some new arrangement myself.

Q. And that was the time that he handed you the money, wasn't it?

A. No, sir, the money was given me, as I remember, before we got Mr. Bancroft's report; whether the actual check was given me at that time, I am not absolutely sure.

Q. On what date did you get Mr. Bancroft's report?

A. I got Mr. Bancroft's report after arrival in San Francisco.

Q. When did you get Mr. Bancroft's report on the assays of the mine?

A. Do you mean the memoranda giving the assays or Mr. Bancroft's formal report? [140—136]

Q. I mean a memoranda giving the assays.

A. The day before I left Denver.

Q. What day did you leave Denver?

A. May 29th.

Q. And you had made that deposit in New York on the 31st of May?

A. A check was received in New York according to the New York Trust Company's statement on that date.

Q. On the 31st day of May? A. Yes.

Q. Had you received by telephone or wire any

(Testimony of David Taylor.)

information as to what the assays were prior to the date that you have just given us?

A. Yes, we received them on May 27th, the first batch on May 27th, and the second on May 28th.

Q. Did you communicate them to your father?

A. Yes.

Q. So your father after seeing the assays gave you this check, which you sent on to deposit in New York, did he?

A. I should say from these dates he could not have; the check was received in New York for deposit May 31st.

Q. You believe you sent it on immediately, do you not?

A. I don't remember just when I sent it on, presumably I sent it on as soon as I got it.

Q. Can you tell us whether your father had placed that money in your hands before or after you received the information as to what Mr. Bancroft's assays showed?

A. I am just trying to give you the dates, I cannot tell you exactly.

Q. Answer the last question.

A. I cannot tell you exactly, no.

Q. You cannot. Have you any recollection on the subject?

A. No except it was given within a few days at that time.

Q. But at the time it was given, if I understand you, your father said there would have to be a

(Testimony of David Taylor.)

modified form of option, and that you were to use it under those conditions?

A. I could not tell you, if the money was given me after Mr. Bancroft's report came in, but as I remember, my father advised me [141—137] not to go on with the deal.

Q. And let you use his money only under the condition, or instructed you to use his money only under the condition that a modification of the option was effected?

A. That was his judgment or advice; the money was mine to use as I saw fit.

Q. Even so, it was a general loan to you, was it, without any provision whatever as to what your father was to receive for it, other than to get his money back? I understood the contrary on your direct examination. A. It was not.

Q. Well, then, what was it?

A. It was a subscription for 25,000 shares of preferred stock in this company, to be accompanied by a certain amount of bonus of common stock.

Q. What did you mean a moment ago when you said the money was yours to do with as you pleased, and you now say, I understand, that it was to be used for a specific purpose; which is true?

A. I say the money was mine to be used as I pleased; I mean it was to be used for the purposes of this deal in any way in which I would put my own money in.

Q. I further understood you a moment ago that

(Testimony of David Taylor.)

you were only to use it in the event a modification of the option was obtained; is that not what you testified to?

A. At the time we left Denver that is the only basis in which I intended to go into the mine.

Q. As a matter of fact then is this not about it: That there was to be a modified form of option, and that your father was to obtain preferred stock to the amount of \$25,000 and you were to give him a bonus in consideration of that \$25,000 of a share and a half for one, payable out of what you might receive in the shape of this 62 [142—138] per cent?

A. That was the basis of the original agreement to put in \$25,000, yes, sir.

Q. Was that not the basis upon which he finally handed you the money?

A. If the money was given me before Mr. Bancroft's report came in that must have been the basis of it.

Q. But you can't tell us then even now, whether it was before or after, and what the precise terms were under which your father finally advanced you the cash, is that so?

A. If you will give me a moment to consult my diary I can tell you the date on which it was received, probably.

Q. Very well, we will leave that. Was nothing said about the par value of the shares, and the number of shares, and the capital stock of the

(Testimony of David Taylor.)

corporation, and how many shares of preferred stock were to be issued?

A. Yes, that was all taken care of in the form of prospectus.

Q. A prospectus issued by you after your father handed you the money?

A. No, the prospectus was drawn up by Mr. Thane and myself before I reached New York.

Q. Did you use that prospectus with your father when he handed you the money, and did he say that he would agree—when your father handed you the money did that prospectus come into play at all?

A. Whether it did specifically or not, I can't say; I discussed the prospectus with my father a number of times.

Q. Were the number of shares in the proposed corporation, or whether a new corporation was to be organized, or whether the old corporation was to issue preferred stock, were those terms discussed with your father?

A. They were all left subject to the opinion of Mr. Jackson; that was one of the things Mr. Jackson was taken out to decide upon; whether a new corporation should properly be formed, whether there should be a new one, or whether the old company should [143—139] be amended so that preferred stock could be issued, or how that was to be handled.

Q. So you will not be misled, I am trying to find out from you just how complete and certain

(Testimony of David Taylor.)

was the agreement which you made with your father?

A. I think it was tentatively agreed upon, subject to Mr. Jackson's approval of the conditions at the time.

Q. Was the capitalization mentioned, whether one million, two million, five million, or any other number?

A. I think it was, yes, sir.

Q. What did your father agree to as to the amount of the capitalization?

A. It wasn't definitely agreed upon.

Q. So there was one thing left indefinite with your father and entirely subject to Mr. Jackson's recommendation to be subsequently made, is that right? A. Yes.

Q. What were to be the number of shares of preferred stock to be issued?

A. The proposal as suggested by all of us, and which was to be carried through unless Mr. Jackson advised otherwise, was the issuance of 150,000 shares of preferred—I think the arrangement, the provision, was for 200,000 shares of preferred, of which sufficient was to be issued to take care of the debts, the remainder to be left in the treasury; I think there was to be a million shares, or a million dollars capital of common stock, whether that would be one dollar shares or hundred dollar shares I don't know.

Q. So then it was not definite as to whether

(Testimony of David Taylor.)

shares would be one dollar shares or one hundred dollar shares?

A. I don't think it was, no, sir.

Q. Nor as to the number of shares to be issued?

A. The amount of bonus common stock issued with the preferred [144—140] was based on a definite number of total shares of common stock in the company; if the total were changed the bonus would naturally be changed to correspond.

Q. Was it not a fact that your father insisted that the old corporation should issue preferred stock, and that he should have that? A. It is not.

Q. Is it not the fact that your father insisted that a new corporation should be organized, to which all of the assets of the three named corporations in Exhibit "C" should transfer their stock?

A. It is not.

Q. Is it not true your father had nothing whatever to do with that, and that did not enter into the arrangement at all, whether or not there should be a new or an old corporation, whether preferred stock should be issued in one amount or another, in one denomination or another, or where the corporation, if a new one, should be organized?

A. My father gave me a good deal of advice in the matter, but he was entirely willing to trust Mr. Jackson's judgment.

Q. So then at the time your father advanced this money there was no understanding, except the very general one that you have testified to, that

(Testimony of David Taylor.)

he should receive preferred stock to the amount of \$25,000, with a bonus from you of one and one-half shares of common stock? A. Yes.

Q. Was it to be common stock in a new company?

A. That wasn't decided upon.

Q. I thought you testified that he was to have one and a half shares out of your 62 per cent of the stock in these three named corporations; was I wrong? A. No.

Q. Well, then, what was it; was it shares of stock in the new corporation, or shares of stock in the old corporation? [145—141]

A. It was shares of stock in the corporation which would operate the mine, whether that was to be an amended form of the old corporation, or a new corporation, had not been decided.

Q. So it was not the fact and you were mistaken when you said he was to have one and a half shares for one out of your 62 per cent of your stock?

A. I was not mistaken, that is what he was to have.

Q. The record here is, if I am not mistaken, that you testified he was to have one and a half shares for one share of preferred, to be paid out of your 62 per cent of stock that you are here seeking to get by specific performance; if you so testified you were mistaken, were you not? A. No.

Q. Now with regard to your father, did you ever have any agreement in writing with regard to this matter? A. No.

(Testimony of David Taylor.)

Q. Did he ever give you a written subscription at any time? A. No.

Q. So there was nothing but the payment of the \$25,000 under the circumstances that you have mentioned, which your father did, and no other term was definitely agreed upon, was it?

A. I don't think any other term was, no, sir.

Q. And the fact finally is that when you got that \$25,000, and before you had attempted to make any use of it whatever, you had your father's instructions that it was not to be used unless there should be a modified form of contract?

A. No, sir, not his definite instructions.

Q. You say not exactly his instructions; he told you not to do it, didn't he? A. No, sir.

Q. Then if a while ago you testified in substance and effect that he did, you were mistaken, were you; there were no strings on this \$25,000? [146—142]

Mr. THATCHER.—He has been asked and answered time after time, giving the facts; I object on the ground it is not cross-examination.

Mr. WHEELER.—The difficulty is the witness in giving his answers sometimes answers one way and sometimes the other.

The COURT.—I would like to have the witness answer that question. (By direction the reporter reads the question.)

WITNESS.—My father gave me that \$25,000 to take preferred stock in this Company, to take \$25,000 worth of preferred stock in this company, to

(Testimony of David Taylor.)

be accompanied by a bonus, as a result of the statements as to the tonnage and probabilities of the mine; whether just after he had given me that money, or whether it was before I got it, we got Mr. Bancroft's figures and estimate showing about what the report would be; Mr. Brown and my father and I then discussed the proposition, and we decided not to go in with it; my father told me, or advised me, or I think we left Denver with the idea of making a modified form of contract, in which that money would be used, with the other money I had available; whether he told me specifically that I could not put that in if I went through with the original deal or not, I do not know; we had decided before we left Denver not to go through with that deal.

Mr. WHEELER.—(Q.) Is that all your answer; is it complete? A. I hope it is, sir.

Q. Well, you know whether you are through or not. I wanted to know before interrupting you. You say preferred stock in that company; what do you mean by that expression?

A. In the company which would operate the mine under the new arrangement.

Q. Then it was not to be preferred stock in the old company or companies?

A. That was not definitely agreed. [147—143]

Q. Now with regard to Mr. Brown, he never did put up any money, did he? A. No.

Q. Did Mr. Brown ever give you a writing to

(Testimony of David Taylor.)

the effect that he would put up some money?

A. No.

Q. All you know is that Mr. Brown said he would? A. Yes.

Q. You don't remember whether it was five thousand or ten thousand dollars, do you?

A. I do.

Mr. THATCHER.—I object to the question on the ground that is not the witness' testimony.

The COURT.—There is some question in my mind as to whether that should be five thousand or ten thousand dollars. It seems to me just a few moments ago he spoke of five or ten thousand dollars.

Mr. THATCHER.—Yes, he did, and he also spoke on another occasion of ten.

Mr. WHEELER.—The witness has testified on direct examination that Mr. Brown agreed to put up ten thousand dollars, and he has testified on cross-examination that he does not remember whether it was five or ten thousand dollars. My question is now directed to this matter.

Mr. THATCHER.—Counsel is in error on that matter. Counsel has made his statement, and I will now make my statement as to the facts. The witness testified that Mr. Brown subscribed ten thousand dollars, and told him it was available to him at any time he wanted it; the witness also testified that before he went to New York, and that was the line of examination at that time,

(Testimony of David Taylor.)

that he agreed to take five or ten thousand dollars at that time, but that when he come back in May, Mr. Brown said he would take ten thousand dollars. They were different conversations altogether, and at different times. [148—144]

Mr. WHEELER.—Perhaps time would be saved if the witness would clear it up.

The COURT.—You may clear it up.

WITNESS.—Mr. Thatcher's statement is correct.

Mr. WHEELER.—(Q.) Well, state the fact?

A. It was ten thousand dollars.

Q. What was it about your remembering five or ten thousand dollars, testified to a while ago?

A. The five thousand or ten thousand dollar subscription made by Mr. Brown was made before I went East, saying that didn't know just how much he would want to take, but I could count on him for five or ten thousand, made some time before this.

Q. When you came back it was ten thousand?

A. It was ten thousand, yes, sir.

Q. Now this was all oral matter, was it?

A. Yes.

Q. Nothing in writing with Mr. Brown?

A. No.

Q. Now with your father it was at all times, I take it, \$25,000? A. Yes.

Q. There was no if or and about that, it was \$25,000 before you went East and \$25,000 after you came back, and there was no other sum?

(Testimony of David Taylor.)

A. Yes, sir.

Mr. WHEELER.—I ask counsel to produce if they have it, the original of the telegram dated May 25th, addressed to Mr. Thane, and signed by David Taylor—May 25, 1919; if not, if they have a copy of the telegram which they will vouch for.

Mr. THATCHER.—Can you go to some other line of examination while I look for it?

Mr. WHEELER.—Well, perhaps the witness can identify a copy.

Q. I hand you a document purporting to be a copy of a telegram, Postal Telegram, dated Denver, Colorado, May 25, 1919, addressed [149—145] to D. L. Thane, signed David Taylor; state whether or not you recognize that as a copy of a telegram sent by you to Mr. Thane? (Hands to witness.)

A. Yes, sir.

Mr. WHEELER.—If no objection is made to its not being an original, we will offer this.

Mr. THATCHER.—It is a copy, is it, Mr. Taylor? A. Yes.

Mr. THATCHER.—No objection.

Mr. WHEELER.—(Reads.) “Denver, Colorado, May 25, 1919. D. L. Thane, Willard Hotel, Washington, D. C. Bancroft reports more than forty thousand tons developed at least two sides thought has not yet got assay results new tonnage bayless reports titles good bancroft wires developments up to expectations and considers proposition good stop strongly opposed any government loan and employment Washington attorneys with cash retainer

(Testimony of David Taylor.)

brown taken ten thousand my father twenty thousand I can swing ninety five thousand if necessary with your twenty five this make necessary amount letter due Biltmore advise filing claim to comply with act there deciding latter on how best to push it duplicate New York. david Taylor."

(The telegram dated May 25, 1919, is marked Defendants' Exhibit "D.")

Mr. WHEELER.—(Q.) Calling your attention to our Exhibit "D" and to the phrase therein: "Brown taken ten thousand my father twenty thousand," were you or were you not mistaken a while ago when you said you father had taken twenty-five thousand?

A. I was not mistaken a while ago, sir; he did take twenty-five thousand at all times, agreed to.

Q. Why the phrase, "my father takes twenty thousand"?

A. Probably a mistake in the telegram, probably the word five left out. [150—146]

Q. I thought you recognized that as a copy of the telegram of the original you sent?

A. The statement in that telegram of twenty thousand is a mistake.

Q. Now you pin yourself down to the proposition that that is a mistake, don't you? A. Yes.

Q. You were trying to raise \$150,000, weren't you?

A. I think at that time there was five thousand necessary.

Q. At that time you were trying to raise \$150,000, were you not?

(Testimony of David Taylor.)

A. I think at that time there was five thousand dollars more necessary to make \$155,000.

Q. Is there any correspondence anywhere to show that \$155,000 was necessary? A. Yes.

Q. Is it not the fact that any talk about an additional \$5,000 came after the date of that telegram?

A. No, sir.

Q. As a matter of fact you now say the \$155,000 was necessary, and not \$150,000?

A. At that time, or just before I left Denver, a telegram came from the mine saying there had been an error in their accounts, that there was an additional five thousand indebtedness.

Q. So you still say that was an error in the telegram, and that your computation was not \$10,000 for Mr. Brown and \$20,000 from your father, making \$30,000; \$95,000 from you, making \$125,000, and \$25,000 which you desired from Mr. Thane, making \$150,000; you pin yourself to that, do you?

A. Yes, sir.

Q. At that time had Mr. Thane already subscribed \$25,000 conditionally, as testified to by you a while ago? A. Yes, sir.

Q. Before you sent that telegram to Mr. Thane then, and while you were in New York, Mr. Thane had subscribed \$25,000, conditioned upon Mr. Bancroft's reporting favorably upon the property?

A. Upon Mr. Bancroft's reporting favorably, and the auditors report [151—147] and satisfactory examination as to title, and so forth.

Q. And why did you send a telegram at that

(Testimony of David Taylor.)

date, asking him to subscribe \$25,000, if he had already made the subscription?

A. There were various telegrams back and forth, I think a few days before that, from Mr. Thane, that his \$25,000 would not be available until he returned to San Francisco; that he expected to be there at the beginning of June.

Q. Have you the telegram referred to just now in which he said that?

A. I think it is in the files.

Mr. WHEELER.—Will counsel kindly produce it.

Mr. THATCHER.—We have copies of it in which Mr. Poole wired to your clients to that effect.

Mr. WHEELER.—Mr. Poole's wire to our clients would not be evidence against this witness.

Q. Examine the telegram which I hand to you, addressed David Taylor, Denver, Colorado, and signed B. L. Thane, and state whether that is the telegram you have referred to in your last answer? (Hands to witness.) A. That is.

Mr. WHEELER.—We offer it in evidence and ask that it be marked our Exhibit "E."

(Telegram dated May 29th, is marked Defendants' Exhibit "E.")

Mr. WHEELER.—I am about to call the attention of the witness to the fact that this is dated the 29th day of May, four days after; a moment ago you testified that in a telegram Mr. Thane had withdrawn from this transaction, or told you that he could not take care of it until he got back to San

(Testimony of David Taylor.)

Francisco, and you say that this is the telegram on which you acted?

Mr. THATCHER.—What date is that?

Mr. WHEELER.—May 29th. I will read the telegram in evidence. (Reads:) “1919 May 29 David Taylor Denver Colo. [152—148] “Your wire May twenty seventh it is impossible me to arrange twenty five thousand by second without my actually having to be in San Francisco and as soon as I found I was going to be delayed on account of the work which I now have to do in Washington and therefore would be unable to be in San Francisco as soon as expected I asked Poole if he would arrange so the twenty-five thousand would not be called until I had time to arrange it in San Francisco he said he would be glad to do this and I am sure he will be able to arrange it stop the people in New York before whom I have already laid this have not turned it down but are slow in giving me answer and I cannot press them beyond what I am already doing stop I am certain if you make a payment of one hundred twenty five thousand as planned Poole and his partners will ge glad give a thirty day extension on the balance which will permit me to clean up my work and go west and make necessary arrangements stop the work which I have to do immediately in Washington is much more vital to my associates and myself than anything else at this time so it is impossible for me to leave until it is finished stop am wiring Poole asking him to arrange to give you all necessary assurance of an ex-

(Testimony of David Taylor.)

tension of time on the twenty five thousand and I am sure he and his associates will be agreeable to this stop if I succeed in getting this eastern group in will try arrange so that money is forth coming immediately and anticipate if they decide come in they will want take up a larger percentage of the underwriting. B. L. Thane."

Q. Now how did that telegram dated the 29th influence you to send your telegram dated the 25th?

A. It could not have, sir; I must have been mistaken and that was the answer; there were a number of telegrams of Mr. Thane dealing with that subject at that time. [153—149]

Q. At no time did you understand Mr. Thane was acting in that for himself, and offered, himself, to put up \$25,000, did you? A. I did.

Q. You don't understand that he would act in the hope New York parties would advance \$25,000, and that he would thus be able to make the payment?

A. No; in that connection, Mr. Thane was to put up \$25,000 of his own, and he was attempting to get money elsewhere in New York.

Q. So then, the words of his telegram of the 29th with regard to the \$25,000, do not in any way refer to his expecting to get that \$25,000 from New York people, as you understand the telegram, is that right?

Mr. THATCHER.—I object; the telegram itself shows.

Mr. WHEELER.—I am getting the witness' un-

(Testimony of David Taylor.)

derstanding, getting at the basis of his readiness to perform.

Mr. THATCHER.—I object on the ground the telegram itself is the best evidence of its contents; and this witness is not competent to testify as to the mental attitude or meaning of Mr. Thane's telegram.

Mr. WHEELER.—It is his own understanding on which he has based his statements that he was at all times ready, able and willing to advance this money.

The COURT.—You may answer the question.

(The reporter reads the question.)

A. They do not.

Mr. WHEELER.—(Q.) Then why, if you understood that he had agreed to come in on his own account with \$25,000, subject to Mr. Bancroft's report, did you send the telegram dated the 25th, in which you ask if he will come in for that amount?

A. He had agreed some time before that to come in for that amount. [154—150] I am sorry, sir, if I did not get your question.

(The reporter reads the question.)

A. Because I had previously gotten several telegrams from Mr. Thane, stating that he would be delayed in putting up the \$25,000, that he could not put it up until he got to San Francisco; I did not want to have to put it up myself, and I tried to get him to put it up.

Q. Did you have any written agreement of any

(Testimony of David Taylor.)

kind with Mr. Thane with regard to his putting up \$25,000? A. No.

Q. So that in testifying on direct examination that Mr. Thane was to come in with \$25,000, or words to that effect, you meant come in under the conditions that are now indicated by his correspondence, that telegram to you?

A. I mean that he was to come in under the conditions of Mr. Bancroft's and the auditor's and legal reports being satisfactory.

Q. But that was otherwise unconditional, and you understood from first to last that it remained unconditional, is that it?

A. I understood that Mr. Thane was to put in his own money, \$25,000 in the beginning.

Q. Were you sure that that was his understanding of it after this telegram dated the 29th of May?

A. I am not sure, no.

Q. Were you sure that was his understanding of it when you telegraphed him on the 25th of May?

A. I am not sure what his understanding was.

Q. Were you sure? A. I was not.

Q. Now with reference to the money which you say that you had on hand, did you have it in your own personal account, or was it an account of the corporation? A. My own personal account.

Q. When was the amount in bank which you have indicated, on what date did it appear there?

A. May I refer to the bank statement? [155—151]

Q. Yes.

(Testimony of David Taylor.)

A. There was a balance there May 31st.

Q. Kindly let me see that statement. (Witness hands statement to counsel.) How long had you had a checking account with the New York Trust Company prior to the month of May, 1919?

A. I don't remember when I first opened it; I have had it there for a good many years.

Q. Is that the depositary that you use in your business?

A. It is one of the depositaries, yes, sir.

Q. And although the account is in your name, you really make deposits there for the corporation referred to by you? A. I do not.

Q. Have you ever?

A. I don't think I ever have, the corporation has its own account in the same bank.

Q. So in the transaction of the business of the corporation this account is in no manner made use of?

A. No, sir; I occasionally have loaned money from one account to another, as I have had purposes for it.

Q. This was an account which was your regular account, into which you placed money, out of which you took money, and was not a special account made for the purpose of this transaction?

A. No, sir, it was not.

Q. So what you mean to say is that your bank balances at certain days are correctly shown in your bank account by the statement which you have just given to my hand?

A. Absolutely, sir, yes, sir.

(Testimony of David Taylor.)

Mr. WHEELER.—We ask that it be marked for identification our exhibit “F.”

(The bank statement is marked Defendants’ Exhibit “F” for identification.)

Mr. WHEELER.—(Q.) You have spoken in the telegram addressed to Mr. Thane about \$95,000 that you could swing; you meant thereby [156—152] that you had money or assets available in your own private accounts that you could use for your own purpose, is that right? A. Yes, sir.

Q. That was not money that you obtained from any person for that purpose? A. No, sir.

Q. It was not money held in trust by you to purchase therewith interests in this property, or in any other property, was it? A. It was not.

Q. In other words, it was your private assets?

A. Yes, sir.

Q. In all of these times you have been a man of some means at least, have you not?

A. The last few years, yes, sir.

Q. And you were in 1919 a man of some means?

A. It depends upon what you call some means.

Q. This account represents a portion of your individual capital, does it not? A. Yes, sir.

Q. It represented at that time a very considerable portion of your individual capital, did it not?

A. Yes, sir.

Q. It represented at that time substantially all of your individual capital, did it not, with the exception of the business that you were conducting in Denver? A. No, sir.

(Testimony of David Taylor.)

Q. What portion, without going into details, did it represent of your individual capital?

A. That is this balance in this statement?

Q. Yes.

A. About thirty-five per cent, I should say.

Q. You have spoken of having bonds and other assets, you mean that they were bonds that consisted of a part of your private capital?

A. Yes, sir.

Q. And that they were in such form and condition, you desire to be understood, that they could be used for the purpose of raising money thereon to go into this, or any venture that you saw fit to [157—153] go in on, is that right? A. Yes.

Q. In other words, a part of your private property, without any strings on it? A. Yes.

Q. Not any property accumulated or acquired particularly for this transaction? A. No, sir.

Q. All of this was property that you had on the 2d day of April, and which you had seen fit to use at that time from that day forward, you could have used it in the same way that you now say you were prepared to use it later on, is that not so?

A. I should say approximately all of it was, yes, sir.

Q. So that no special efforts of any kind were made by you to get the money that you say you were prepared to go through this transaction with, so far as you individually were concerned, in the proportion that you thought of contributing to the transaction?

(Testimony of David Taylor.)

A. A great many efforts were made because I didn't want to put my own money into it.

Q. You misunderstood me. Read the question, please.

(The reporter reads the question.)

A. Yes, sir, certainly efforts were made.

Q. What were they?

A. I sold some \$75,000 worth of stocks and bonds on the New York Stock Exchange at a very decided loss, which I personally owned, so as to have the money on deposit by the first of June.

Q. Anything else?

A. Yes, I had arranged to—oh, of that money, no, sir.

Q. When did you make the sale which you referred to of stocks and bonds on the New York market?

A. Somewhere between the 10th and 15th or 18th of May, scattered along at different periods.

Q. Some of it, then, you sold after you had determined to have Mr. Bancroft make a report, did you not?

A. I don't remember the exact day that the Bancroft report was [158—154] arranged for.

Q. I understood you to say that it was about the 12th?

A. I said somewhere about the 12th or 13th or 14th, I am not sure of the exact date.

Q. Well, if it was the 12th, 13th or 14th, some of the stocks that you sold in anticipation of this transaction were sold after you had determined

(Testimony of David Taylor.)

to have Mr. Bancroft make a report on this property?

A. If they were sold after that date, they were.

Q. Whether sold thereafter you cannot tell us?

A. No, sir, not exactly.

Q. Would anything in your deposits in bank refresh your memory, and enable you to tell us, as indicated in the document offered in evidence?

A. No, sir, they will not exactly, no.

Q. Was it the fact that at all times after the 2d day of April, you intended to contribute any money, or any considerable sum of money to the amount that was to be furnished?

A. I expected to contribute some in the beginning, I did not know how much.

Q. Were you prepared at all times from the beginning, and did you expect to advance as much as thirty odd per cent of your private fortune in this transaction, if occasion required?

A. No, sir, I did not expect to I always thought of that as a possibility.

Q. Counting it as a possibility and if you found you could not arrange it otherwise through other persons, were you prepared at all times, without any further investigation, to advance 30 per cent and upwards of your private fortune in order to carry through this transaction?

A. I considered it always a possibility.

Q. Answer the question, please.

(The reporter reads the question.) [159—155]

A. I was prepared to, yes, sir.

(Testimony of David Taylor.)

Q. And intended to do it?

A. No, sir, I did not intend to.

Q. You would have done it, though, without any further investigation of the property?

A. I don't know whether I would have or not, till the time came.

Q. That is exactly what I wanted to find out.

(At 4:35 P. M. an adjournment is taken until tomorrow, Thursday, September 16, 1920, at 10:00 o'clock A. M.)

Thursday, September 16, 1920.

Court convened, 10 o'clock A. M.

Cross-examination of Mr. DAVID TAYLOR,
Resumed.

Mr. WHEELER.—Counsel will aid me if they will have ready all telegrams which passed between the witness and Mr. Bancroft in the month of May, 1919, both to Mr. Bancroft from the witness and from Mr. Bancroft to Mr. Thane, or from Mr. Thane to Mr. Bancroft, in which the witness has any participation.

Q. Mr. Taylor, in regard to the subscription of Mr. Brown, as I understand you, before you went to New York he had said that he would subscribe \$5,000, but after you returned from New York soon after the middle of May, 1919, he said that he would subscribe \$10,000, or words to that effect; is that correct?

A. That is not exactly correct; no, sir.

Q. State then what the circumstances were, fully.

(Testimony of David Taylor.)

A. When I went East in the beginning, Mr. Brown said that he would take five or ten thousand dollars.

Q. And when you returned?

A. When I came back he said he would take ten thousand. [160—156]

Q. What date did you return to Denver from New York? A. May I refer to my diary, sir?

Q. Surely. You left New York on what date and arrived in Denver on what date?

(Witness refers to diary.)

A. I left New York on May 17th, arrived in Denver on May 19th.

Q. How soon after arriving in Denver did you see Mr. Brown?

A. I probably saw him the same day; we have offices in the same place; I am not sure.

Q. At that time did you see him alone, or with your father? A. I could not tell you, sir.

Q. At that time you were keeping Mr. Brown fully advised, I take it, as to what you were doing in this transaction?

A. Yes, in a very general way.

Q. Explained to him at that time that you were going ahead with the matter.

A. Whether I explained to him that day, or within the next two or three days, I don't know; I can't say just what date I saw Mr. Brown.

Q. You explained to him that Mr. Bancroft was going out on the property? A. Yes.

Q. And he said to you after you had explained

(Testimony of David Taylor.)

the then status of matters just what, with regard to the \$10,000?

A. I am not sure that I made the explanation first or not; he said at the time that he would take \$10,000; his first limitation was that he didn't know at that time whether he would have an extra \$5,000 free, is the reason in the beginning he had only permitted himself the five.

Q. At any rate, you were not sure, you say, that you told him about the status of matters before he said ten thousand dollars.

A. Not particularly at that time, no, sir.

Q. What is your best impression—your best impression is that in [161—157] dealing with this gentleman you informed him of the exact status, isn't it?

A. My best impression would be that the first time I saw him I talked over everything with him, because I do that in various matters in which he is interested with me.

Q. Was it the first time you saw him that he increased his promised subscription to \$10,000?

A. I could not tell you, sir.

Q. It might have been later on?

A. It might have been, yes, sir.

Q. Might it have been after you had received Mr. Bancroft's report? A. Very improbable.

Q. When with reference to the time that your father handed you the \$25,000 to send to New York did your talk with Mr. Brown occur?

A. I could not tell you, sir.

(Testimony of David Taylor.)

Q. May it not have been after?

A. Very improbable that it was after, because the date of the deposit of that check of my father's in New York shows that was sent, must have been sent, from Denver about the 28th—27th or 28th; Mr. Brown was in the office and I was talking to him subsequently about this and other things.

Q. Did you tell him that you had received advices from Mr. Bancroft? A. What advices?

Q. Telegrams or communications by telephone or letter, giving you the results, any of them, of his examination of the mine?

A. The first time Mr. Brown came in the office or I saw him after the receipt of any telegrams or letters in connection with this matter; I took them up with him, always.

Q. Did you show or read them to him?

A. Whether I showed or read them to him, or told him what was in them, I don't know. [162—158]

Q. At any rate, you told him the contents of the telegrams? A. Yes, sir.

Mr. THATCHER.—(Q.) Both as to the first telegram you received, and also as to the letters telegrams or communications? A. Yes, sir.

Mr. WHEELER.—Let me have, if you please, the communications that passed between you and Mr. Bancroft, beginning with your first wire to him from New York, asking him to make this examination.

Mr. THATCHER.—It will take him some little

(Testimony of David Taylor.)

time to sort those out; Mr. Bancroft has them all—has copies of all of them.

Mr. WHEELER.—I will be very glad to facilitate matters in that way, it will also help to get Mr. Bancroft on the stand at an earlier moment.

Mr. THATCHER.—This is from what date?

Mr. WHEELER.—From the time he was in New York; the first telegrams that passed between him and Mr. Bancroft from New York, or Mr. Thane and Mr. Bancroft; as I understand, Mr. Thane and Mr. Bancroft were acting together.

Q. I hand you a telegram dated May 14th, New York, addressed to Howland Bancroft, and signed David Taylor; was that telegram sent by you to Mr. Bancroft at that time? A. Yes, sir.

Mr. WHEELER.—We offer it in evidence, and I will read it now into the record, with the agreement that a copy may be substituted, as Mr. Bancroft wishes to keep his files.

Mr. THATCHER.—I am willing to let the record stand, and not have a copy.

Mr. WHEELER.—I think a copy ought to be put in; it is always more convenient. We can be certain that the copy is a correct copy, and I want all of the time marks, etc., upon it. (Reads:) “1919 May 14 A. M. 7:33, New York, N. Y. Howland Bancroft Cr B. Bane [163—159] 408 Crocker Bldg., San Francisco, Calif. Important get immediate opinion mine no extended examination needed but want your statement that forty thousand

(Testimony of David Taylor.)

tons sure with one point four recoverable when can you leave for mine answer thirty Pine street. Poole here. David Taylor."

(The telegram is marked Defendants' Exhibit "G.")

Mr. WHEELER.—(Q.) Do you recognize the document now shown to you, according to the telegram, from Mr. Bancroft to you, as a copy of a document received by you in due course?

A. Yes, sir.

Mr. WHEELER.—We offer it in evidence. I will read it. (Reads:) "San Francisco, Calif. May 15, 1919. David Taylor 30 Pine Street New York, N. Y. Your wire fourteenth. Impossible to determine amount and content of ore without sampling. Stop. Will be exceedingly busy for some time and am not at all certain that I can undertake the work. Stop. While I should like to make this examination suggest you get some one else." Signed Howland Bancroft.

(The telegram dated May 15, 1919, is marked Defendants' Exhibit "H.")

Q. I will ask the witness, to save time: Did you receive any communications other than by wire, from Mr. Bancroft, in this month of May, or after the 14th day of May, 1919?

A. I don't remember any, no, sir, I may have.

Q. Have any telephone communications?

A. I don't think so, no, sir.

Q. I hand you a wire dated Tungsten, Nevada, May 22, 10:20 P. M., purporting to be to you from

(Testimony of David Taylor.)

Mr. Bancroft; do you recognize that as a wire received by you? A. Yes, sir.

Mr. WHEELER.—I offer it in evidence. I will read it. (Reads:) “Tungsten Nev 855 P 22 A May 22 PM 10 20 David Taylor 730 Symes Bldg Denver Colo Your letter twentieth just received [164—160] stop required tonnage exposed on at least two sides stop can give no positive assurance regarding tungsten contents until receipt of assay returned stop believe property will hold up and my former favorable opinion remains unchanged stop am leaving for Denver from Imlay train number two or twenty early Saturday morning please tell Miss Furber. Howland Bancroft.”

I call your attention to the phrase “required tonnage exposed on at least two sides”; you understood that to refer to the 40,000 tons suggested in your telegram heretofore offered in evidence, did you not? A. Yes, sir.

(The telegram dated May 22d is marked Defendants’ Exhibit “I.”)

Q. I call your attention to a copy of a telegram dated May 20, 1919, addressed to Mr. Howland Bancroft, Lovelock, Nevada, signed David Taylor; do you recognize that as a copy of the wire sent by you to Mr. Bancroft? A. Yes, sir.

Mr. WHEELER.—We offer that wire in evidence. (Reads:) “Denver Colo May 20, 1919—4:30 P M Mr. Howland Bancroft, Care of Nevada Humboldt Tungsten Mines Co., Lovelock, Nevada. Important letter due Mill City Wednesday mid-

(Testimony of David Taylor.)

night mailed you today. David Taylor." Let this be our Exhibit "J," please.

(The telegram dated May 20, 1919, is marked Defendants' Exhibit "J.")

Mr. WHEELER.—(Q.) In the telegram just offered in evidence reference was made by you to an important letter; I hand you a letter addressed Mr. Howland Bancroft, what appears to be a copy of one, with the words "Your sincerely, May 20, 1919"; is that a carbon copy of the so-called important letter referred to in your wire?

A. Yes, sir.

Q. Was the original of that letter signed by you?

A. Yes, sir. [165—161]

Q. And mailed to Mr. Bancroft? A. Yes, sir.

Mr. WHEELER.—I will read the letter in evidence. (Reads:) "Denver, Colorado, May 20, 1919. Mr. Howland Bancroft, Nevada Humboldt Tungsten Mines Co., Mill City, Nevada. Dear Howland: I was glad to learn you were again at the mine, and this morning have your letter advising of your plans for an assistant and for arranging a quick assaying by Watts.

"John G. Jackson, New York attorney, is now planning to leave New York Friday, May 23rd, spending a day in Chicago, which would bring him to Lovelock May 29th. I do not wish to go to this expense if your examination does not check up our idea that there is at least 40,000 tons of ore assured, with probabilities of a big additional tonnage, so that, if upon receipt of this letter, you can give me

(Testimony of David Taylor.)

any idea as to whether you think the tonnage is there or not, I wish you would wire me either 'Advise postponing lawyer's trip,' or 'Advise having lawyer leave at once.'

"Inasmuch as eventually Thane and I will hope to place the preferred stock in New York, we thought it better to have a New York lawyer O. K. final form of incorporation, etc.

"If it is in any way possible I want to get the deal closed before the first of June, so that I personally will not have to 'carry the sack' for the concentrates now being produced and to be shipped in the beginning of June. If I have to do this it means so much less available money for making good the deficiency between \$150,000.00 and what Thane finally raises in New York.

"Please wire me definitely upon receipt of this letter whether or not you can express an opinion by the end of the week. With regards, Yours sincerely."

The witness says it was signed David Taylor.

(The letter dated May 20, 1919, is marked Defendants' Exhibit "K.") [166—162]

Mr. THATCHER.—I think we have a couple of other telegrams.

Mr. WHEELER.—I am very anxious to get the telegram in evidence which was sent in response to that letter of May 20th. Is there not a telegram saying something to the effect that you report favorably?

Mr. THATCHER.—That was the only telegram.

Mr. BANCROFT.—That was the only one referring to tonnage.

Mr. WHEELER.—I desire particularly at this time any telegrams or communications of any kind, telephonic, by letter or by telegram, referring to the assays, or to anything else.

Mr. THATCHER.—I will get that, too.

Mr. WHEELER.—Is there not a telegram saying that you consider the proposition good?

Mr. BANCROFT.—That was the same wire.

Mr. WHEELER.—If you have such a telegram, I would like a telegram from Mr. F. M. Taylor, father of the witness, which I assume suggests that you make the trip.

Mr. BANCROFT.—I have no recollection of receiving a wire from Mr. F. M. Taylor.

Mr. WHEELER.—No wire whatever?

Mr. BANCROFT.—No.

Mr. WHEELER.—Any letter?

Mr. BANCROFT.—No.

Mr. WHEELER.—Then the wire from Mr. Thane is the one I want. (The papers are handed to counsel for defendant.)

Mr. WHEELER.—(Q.) I hand you a telegram dated June 2d, 6 A. M. addressed to David Taylor, signed Howland Bancroft; and also another dated May 30, B. L. Thane, signed David Taylor; are both of those telegrams familiar to you, and did you send the one purporting to be signed by you, and did you receive the one purporting to be signed [167—163] Howland Bancroft? A. Yes, sir.

Mr. WHEELER.—We offer in evidence a telegram dated May 30, 1919, addressed to B. L. Thane. (Reads:)

“Ogden Utah May 30, 1919.

“B. L. Thane Biltmore Hotel, New York City.

“Bancroft original tonnage estimate all right but large part not commercial thus accounting for only twenty thousand tons average recoverable tungsten one point forty six per cent tungstic acid showing sure profit of only hundred thousand dollars stop will endeavor extent present option six months having friendly bankrupt proceedings and myself appointed receiver make Poole superintendent build assay office get assayer at mine and make agreement with court that we will exercise option whenever Bancroft will certify to forty thousand tons of one point four recoverable developed ore on at least two sides stop Bancroft still believes general prospects for big cheap mine excellent stop on this basis will you agree to take twenty five thousand on same basis when requisite tonnage and grade developed stop if you approve suggest wiring Poole urging him to favor this plan address Lovelock Saturday.” Signed David Taylor.

(The letter dated May 30, 1919, is marked Defendants' Exhibit “L.”)

Mr. WHEELER.—Under date of June 2d, 1919: (Reads:)

“David Taylor Palace Hotel San Francisco, Calif.

(Testimony of David Taylor.)

“Final assays received today stop results of sampling show that the total developed partially developed and indicated ore of a commercial grade in the Nevada Humboldt Mine as at May twenty fourth this year is eighteen thousand four hundred and seventy seven tons stop the average grade of this tonnage as indicated by assay returns from detailed sampling is one point sixty-four [168—164] tungsten trioxide stop the above summary may be attached to and form a supplementary part of my preliminary report on this property dated February fifteenth nineteen nineteen. Howland Bancroft.”

(The telegram dated June 2, 1919, is marked Defendants' Exhibit “M.”)

Mr. THATCHER.—Did you ask for another message from Mr. Thane to Mr. Bancroft of about the 14th?

Mr. WHEELER.—Yes, I did.

Mr. THATCHER.—The best we can give you is a copy, and the only way we can identify it, Mr. Thane not being here, Mr. Bancroft can merely say it is not in his files, it is in ours.

Mr. WHEELER.—I take it if the witness saw the telegram—

Mr. THATCHER.—(Q.) Was Mr. Thane in New York with you on the 14th, Mr. Taylor?

A. Yes, I was there and saw that telegram.

Q. Were you sending telegrams at the same time?

A. Yes.

Q. When you sent your telegrams to Mr. Bancroft

(Testimony of David Taylor.)

did Mr. Thane also send telegrams to Mr. Bancroft?

A. Yes, the next day he dictated one in my presence.

Q. So that that part of the correspondence shown here, Mr. Thane to Mr. Bayless, Mr. Thane to Mr. Bancroft, and yourself to Mr. Bancroft, you and Mr. Thane, in other words, were attending to these matters together in New York? A. Yes.

(Counsel for plaintiff hands letter to the witness.)

A. Yes, sir, that is it.

Mr. WHEELER.—The witness, your Honor, has identified a copy of a letter now to be offered, and counsel consent that it may be offered in lieu of the original. The letter reads:

“May 14, 1919.

“Holland Bancroft, Care B. L. Thane,
408 Crocker Building, San [169—165] Francisco, Calif.

“I am glad to hear that you have returned from Mexico. Please advise me by night letter your general opinion on the Copale proposition as I would like to talk to Mr. Jackling about it before he leaves here. Stop. Mr. Taylor advises he has wired you to make immediate examination of Nevada Humboldt Tungsten Mine. The principal purpose to determine and have report complete and available in San Francisco before May thirty first on the tonnage in sight as well as general outlook of property. This must be known in order that we may be certain there is sufficient tonnage to absolutely guar-

(Testimony of David Taylor.)

antee the hundred and fifty thousand dollars necessary to close the transaction. For your information I am satisfied deal which Mr. Taylor has made is the best he could make under the circumstances and even so it is not going to be the easiest thing to close this transaction under present conditions but we are hopeful of doing so. Stop. Bayless will show you a wire which I have sent him today which will be self explanatory. I hope you will be able to co-operate with him and with us in every way to make this transaction possible because if we are able to close it it will be a good piece of business for all of us and everything must be in final shape by May thirty first and available in my San Francisco office at that date. Stop. Taylor suggests that if you can make examination immediately and then proceed to Denver he could meet you there next week on his way to San Francisco. Please advise me your procedure. B. L. Thane.”

(Letter dated May 14, 1919, is marked Defendants’ Exhibit “N.”)

Mr. WHEELER.—In this connection, I offer the telegram identified by Mr. Bayless, our Exhibit “A” for identification, and ask that it be considered read, let it go in finally now as Exhibit [170—166] “A.” Is that satisfactory to counsel?

Mr. THATCHER.—Yes.

(The letter dated May 14, 1919, heretofore marked Defendants’ Exhibit “A” for identification, is admitted and marked Defendants’ Exhibit “A.”)

Mr. WHEELER.—There is but one passage here

(Testimony of David Taylor.)

to which I desire to call the Court's attention at this time: "I am wiring Bancroft as Taylor already has done to make immediate examination of ore reserve so that we may be sure that payment is warranted."

Q. The first telegram to Mr. Bancroft appears to have been sent by you on May 14, 1919; on what day did you reach the conclusion to have an examination of the mine made? A. By Mr. Bancroft?

Q. By anyone?

A. On Mr. Thane's advice coming East on the train, along about the beginning of May.

Q. About the beginning of May? A. Yes.

Q. Did you negotiate with any other person before sending this telegram to Mr. Bancroft to have an examination made?

A. I think it was suggested by Mr. Holter, one man I put this thing up to in New York, that if he became interested he would want to send his own engineer out there; he didn't do it because he did not take an interest.

Q. That was early in May, was it?

A. I can give you the exact date if you want it, sir.

Q. You say you can give it to me exactly?

A. I can give you the exact date of my talk with Mr. Holter, if you want it.

Q. Yes, give me the exact date.

The COURT.—Has he answered that question when he first determined [171—167] to have the

(Testimony of David Taylor.)

examination made by Mr. Bancroft, the first or middle of May?

Mr. WHEELER.—First in the month of May when he concluded to have it done.

The COURT.—He didn't say the first of May, but decided in May?

WITNESS.—I meant to say the first of May.

Mr. WHEELER.—(Q.) You meant to say the first of May?

A. In the beginning of May, on my way east with Mr. Thane.

Q. I understood you to say in the very beginning of May the question of having the mine experted arose, and you decided on a certain day to have the mine experted, and I understood you to say this gentleman wanted it experted if he went into it; now you are giving me that date, am I right?

A. Yes, sir, May 9th.

Q. Then before Mr. Bancroft was wired on May 14th, had you not discussed the question of having an examination made for yourself by another expert?

A. No, sir, not for myself.

Q. At any rate there was discussion of having another expert make an examination, was there?

A. Yes.

Q. Was any name mentioned?

A. I don't remember the name; there was a man in Mr. Holter's office—Mr. Holter was an engineer—one of his assistants that he thought of sending out there, if he went ahead; I could not tell you his name.

(Testimony of David Taylor.)

Q. As between you and Mr. Thane, was there not a discussion prior to the 14th day of May about sending Mr. Brunton out?

A. No, sir, nobody could send Mr. Brunton out.

Q. What say?

A. No, sir, there was no such discussion between us of sending Mr. Brunton out; there was a discussion mentioned by [172—168] me several times, if Mr. Brunton would take an interest in it, he might go out on his own account and look at it for himself; Mr. Brunton does not do any consulting work for anybody else.

Q. How soon before the 14th day of May did you and Mr. Thane agree that Mr. Bancroft should be wired to?

A. Mr. Thane advised it when we went over and prepared our prospectus on the train going East, on our way from Lovelock to New York; and at various times after that insisted on it.

Q. And you assented? A. Yes.

Q. As early as what date?

A. I could not tell you the exact date.

Q. When did you first determine that you, yourself, would make a contribution of \$95,000 to the transaction?

A. I could not tell you the exact date, sir.

Q. Endeavor, if you please, to fix it approximately.

A. It would be absolutely impossible for me to fix it; I don't know when I determined, between the time the contract was signed and I was ready to close

(Testimony of David Taylor.)

the deal, on what day I could not possibly tell you.

Q. You say when you were ready to close the deal? A. Yes.

Q. What date do you fix as the date when you were ready to close the deal?

A. The exact date I could not fix; I should say when we sent Mr. Jackson out; when all the reports were ready that everything was satisfactory.

Q. Then when you concluded that would advance a large amount of money, you had also reached the conclusion that you would not advance it unless the reports were received and everything was satisfactory, is that true? A. Yes, sir.

Q. In other words, you did not intend as a business man to advance in this transaction \$95,000, or any other large sum, unless the reports [173—169] should be satisfactory, is not that so?

A. Not altogether, no, sir.

Q. Well, what is the fact?

A. The fact is on the train going East with Mr. Thane, I offered to put up \$75,000 myself, if Mr. Thane would put up \$75,000 to go through with the deal at that time; Mr. Thane refused and said it is perfectly absurd, you want that thing checked up, have got to have it checked up, and at that time, from then on, we discussed Mr. Bancroft and other people making a check examination.

Q. You knew Mr. Thane as a competent mining man, did you not? A. Yes, sir.

Q. And did you place any stock in what he said as to checking up the property? A. Naturally.

(Testimony of David Taylor.)

Q. And so you did believe from that time forward, from the time that you were going East upon the train, that before you would consent to come into it with any large amount of money, you should have the property checked up, and so agreed with Mr. Thane?

A. I don't know when I absolutely agreed with Mr. Thane.

Q. At any rate it was your understanding from the time that gentleman, distinguished in mining matters, made that suggestion to you that it was the thing that you ought to do under the conditions, before you would go ahead with the transaction, and put up a large sum of money, or ask him to do it; is not that so?

A. Probably so, yes, sir; just the exact date whether I should have gone ahead or not with a certain sum of money, I don't know, I didn't.

Q. When was it definitely determined, and did you place yourself in a position that you would advance a large sum of money on this transaction, when with reference to your conversation with Mr. Thane? [174—170]

A. I could not tell you exactly.

Q. How long after you reached New York did you proceed to place yourself in that position?

A. The position of being able to take it?

Q. Yes.

A. Why, I sold some stocks and bonds, and made arrangements to have cash on hand, enough to take it, along between the 12th and 17th of May.

(Testimony of David Taylor.)

Q. So you intended to be in a position, if it checked up right, to do that, is that it?

A. Yes, sir.

Q. And on some day intermediate to your trip on the train with Mr. Thane to New York and on the 14th day of May, you reached the conclusion that you would employ Mr. Bancroft to have him make an examination in order to advise you whether or not there were sufficient ore reserves there to justify you in putting up a large amount of money?

A. Yes, sir.

Mr. WHEELER.—That is all for the present. You may call Mr. Bancroft now, if you wish. [175—171]

Testimony of Howland Bancroft, for Plaintiff.

Mr. HOWLAND BANCROFT, called as a witness on behalf of plaintiff, after being sworn, testified as follows:

Direct Examination by Mr. THATCHER.

Mr. WHEELER.—So far as I am concerned, as to preliminary questions, you need not ask any qualifying question; we admit the ability, character and expert standing of the witness.

Mr. COOKE.—The same as to us.

Mr. THATCHER.—Under the circumstances, I see no reason to ask them.

Mr. COOKE.—That is the reason we waive them, to save time.

(Testimony of Howland Bancroft.)

Mr. THATCHER.—(Q.) Mr. Bancroft, what is your full name? A. Howland Bancroft.

Q. What is your profession, please?

A. I am a mining geologist by training, and valuer and examiner of mining property and metaliferous deposits by experience.

Q. Your qualifications being admitted, will you state whether or not you became familiar with the Nevada Humboldt Tungsten Mining Company, and with its properties?

A. Whether or not I became, or when I became?

Q. Whether or not you did become?

A. I did become familiar.

Q. Will you state when they first came to your attention, and the history leading up to it?

A. The Nevada Humboldt Tungsten Mining Company negotiations was first called to my attention in San Francisco, approximately the end of October, 1918, at which time I was investigating a number of tungsten deposits for the Rare Metals Ore Company, in Denver, Colorado, clients of mine in Colorado. I had looked at several properties, and knowing Mr. Thane in San Francisco, I asked him if he [176—172] knew of meritorious tungsten deposits which I might refer to my clients, then represented by me on this particular trip. He suggested, and practically he gave me his files, and brought one of his engineers in, Mr. Hyder, to discuss the properties; among these properties was the Nevada Humboldt Tungsten Mines Company property; and he handed me a report upon this property by Mr.

(Testimony of Howland Bancroft.)

Hyder; I submitted this to my principal, or one of my principals, who accompanied me on this trip, and the property appeared to be interesting from the view point of an ore body. The price at which the property was offered was prohibitive, and we so informed Mr. Thane; and there was no further interest in the matter at that time. We proceeded to Nevada—I say we, I mean myself and Mr. Nelson Franklin, vice-president and general manager of the Rare Metals Ore Company of Colorado; we proceeded to Nevada, investigated a number of other tungsten properties, and received communications from Mr. Thane in Ely, suggesting that the negotiations for the Nevada Humboldt Tungsten Mines Company might be adjusted to our satisfaction; in other words, that we might be able to arrange some sort of a deal whereby the property would become of interest to us under the terms and conditions. Mr. Thane requested a meeting; we informed Mr. Thane that we would meet him in Reno, and came back to Reno to keep our promise. We there met Mr. Thane and Mr. Pettigrew; and it was suggested by some of the interested parties in the Nevada Humboldt Tungsten Mine Company mine that we make a visit to their property—Mr. Thane, Mr. Pettigrew, Mr. Franklin and myself. We decided to go up and see the property, which we proceeded to do early in November, 1918. We spent one day on the property, and took no samples, but we were shown through the mine by Mr. Morrin, as I recall it; I am not sure whether Mr. Poole went under-

(Testimony of Howland Bancroft.)

ground with us or not; in any event, the property looked attractive, and we proceeded on to Denver, and I handed in my report on the general [177—173] investigation I had made, and I spoke in favorable terms of the Nevada Humboldt Mine to the Rare Metals Ore Company. Negotiations continued between Mr. Thane and me and the Rare Metals Ore Company for a period of approximately six weeks; at the same time, I understand from the wires, Mr. Thane was in conference with Mr. Friedman, and possibly with others, but I don't know. Mr. Thane was very anxious to have Mr. Franklin and me return to San Francisco, and tried to arrange a proposition that would be equitable and satisfactory to all of us. Eventually the Rare Metals Ore Company decided not to be further interested, this being approximately the 31st of December, 1918, and I asked Mr. Wood, the president of the company, if he had any objection to my taking this matter up with others; Mr. Thane in the meantime, having suggested certain definite arrangements which the Rare Metals Ore Company was unwilling to accept, and which, by the way, I did not recommend them to accept. I received their release from any further interest in the properties; in other words, they told me I could take it up with any one else I pleased, and I took it up with Mr. David Taylor in Denver, early in January, 1919. That brings the negotiations up to Mr. Taylor.

Q. Now later, did Mr. Taylor, pursuant to the

(Testimony of Howland Bancroft.)

property being put up to him by you, negotiate with the owners of the property, or the stockholders?

A. He did.

Q. And where did those negotiations take place?

A. I know that some of them took place in San Francisco.

Q. And were you present, I mean in San Francisco, during the negotiations?

A. I was in San Francisco during that period connected with the negotiations preceding the option, which was signed on the 16th of January, but I do not profess to be familiar with the terms.

Q. Did you have an interest in the deal with Mr. Taylor? A. I did. [178—174]

Q. What was that interest?

A. I was supposed to receive in lieu of professional fees for my services in connection with the examination then contemplated, a twenty per cent interest in whatever accrued to Mr. Taylor as profits, accrued to Mr. Taylor as a result of the successful examination of this property.

Mr. WHEELER.—(Q.) Was it a written contract? A. Yes, sir.

Mr. WHEELER.—Will you kindly produce it. (Witness produces paper.)

Mr. THATCHER.—(Q.) Is this which you have handed me the contract between yourself and Mr. Taylor relative to your proceeding in the deal?

A. Yes, this is a signed copy, and witnessed.

Q. And is that your signature, and that of Mr. Thane and of Mr. Taylor?

(Testimony of Howland Bancroft.)

A. Yes, sir, I know them all.

(A short recess is taken at this time.)

Mr. THATCHER.—If the Court please, we offer in evidence the contract between Mr. Taylor and Mr. Thane and Mr. Bancroft, by which their interests were determined.

Mr. COOKE.—No objection.

(The contract is marked Plaintiff's Exhibit No. 18.)

Mr. THATCHER.—(Q.) After the option was entered into, Mr. Bancroft, and this contract, which is Exhibit 18, did you go out and make an examination of the mine? A. I did.

Q. At whose request? .

A. At the request of Mr. Taylor.

Q. Did you make a report after your examination?

A. Following the examination I did, I made a report.

Q. Did you send that report to Mr. Taylor?

A. I did.

Q. I call your attention to Plaintiff's Exhibit 15, and ask you if this is the original report which you sent Mr. Taylor, I mean [179—175] the first report which you sent Mr. Taylor, and which you made? A. I made this report.

Q. As a result of your examination made of the mine? A. Yes.

Q. Will you state when you made this examination, and how long a time you were in making it?

(Testimony of Howland Bancroft.)

A. The examination was made between the 17th of January and the 27th of 1919.

Q. Will you state what you did in your examination; just go ahead and state.

A. During the course of the examination, the surface in the vicinity of the deposit was again examined, the first cursory examination of the surface having been made the preceding November; the underground workings of the mine as then developed, were inspected in a detailed way, and the samples which were to be cut were located and later taken.

Mr. WHEELER.—Pardon me; was Mr. Taylor present during this examination?

A. He was not.

Mr. WHEELER.—I move the evidence be stricken out, your Honor. All we are interested in now as to this January report is as to what was communicated to Mr. Taylor, and we know that the report itself was communicated; it is irrelevant and immaterial.

Mr. THATCHER.—One of the questions in this case will be the correctness and accuracy of that report. I presume, of course, that counsel is willing to admit that the report as made by Mr. Bancroft at that time, and as here offered in evidence as an exhibit, in this case, is accurate and correct, there is no question.

The COURT.—It seems to me it will be sufficient for you to let him testify in general that the report is correct, without going into details.

(Testimony of Howland Bancroft.)

Mr. WHEELER.—If Mr. Bancroft identifies the report, I know it is his best judgment, and correctly sets forth his views. [180—176]

Mr. THATCHER.—(Q.) Mr. Bancroft, is the report you there have, the result of your examination?

A. It is, absolutely, with the exception of these pencil marks which occur in various places throughout. I had no pencil marks in the report when I sent it on.

Q. And is the report the correct result of your examination? A. Absolutely.

Q. And is it a correct statement of the condition of the mine at that time?

A. To the best of my ability to determine it.

Q. After that, Mr. Bancroft, did you make any further examination of this property?

A. I did.

Q. I notice in the report is a map, or plane map, called Exhibit Number 5; have you a larger copy of that as originally made? A. Yes.

Q. Will you produce it. (Witness produces map.)

Q. What is the paper that you have there?

A. Well, this is Plate 5A, and this is Plate 5, so that this is not the same plate as the one you refer to.

Q. All right, I will come to that. Did you send to any of the defendants, or to the Nevada Humboldt Tungsten Mines Company, or its manage-

(Testimony of Howland Bancroft.)

ment, any assay plan of the mine, after you made your examination?

A. Just a moment, if you please. Do you wish this map to go in?

A. I have a larger map of this Plate 5, but that does not happen to be it—if you want to see it.

Q. Have you a larger map of that?

A. My original map of Plate 5, I have.

Q. Well, I don't care for that.

Mr. WHEELER.—That, I understand, is a photostat of your original map?

A. Yes, sir, a photostat production of the original tracing. I have the original map here, but not the tracing of the original map here; the photostatic production was made from the tracing of [181—177] the original map, but it is all an accurate record.

Mr. WHEELER.—(Q.) Is the map Judge David is holding, the original map?

A. That is a white print of the negative of the original tracing of Plate 5A, which was made following my examination in May, 1919.

Mr. THATCHER.—(Q.) In your report, Plaintiff's Exhibit 15, is Plate number 5—will you explain to the Court exactly what Plate number 5 is?

Mr. WHEELER.—Objected to on the ground it speaks for itself, and what the witness is now asked to explain to the Court could not have influenced the witness Taylor.

Mr. THATCHER.—It is merely so that the Court may understand the plate itself, and the readings

(Testimony of Howland Bancroft.)

on it; there are ambiguities in it that are patent, and which the witness can explain.

Mr. COOKE.—Unless they were brought to the attention of Mr. Taylor they are not material in this case; in other words, unless Taylor had the same understanding of it which the witness is about to state.

The COURT.—I don't see the necessity of it. The value of the mine at that particular time is not a question that will come in issue?

Mr. THATCHER.—Not at that time, except the character of the development work then existing. I am merely putting it in, if your Honor please, to show that certain lines on this map—for instance, these little lines, with the arrow running up, and the marking, .05 and 22, now without some explanation for the purpose of the record—

The COURT.—(Intg.) Oh, he may explain.

WITNESS.—It is a very simple matter; the samples are all indicated by these arrows. If the samples were taken from the roof, or the drift, for example, the arrow points to the point from which [182—178] the sample was taken. The same if the sample was taken from the floor. The first figure below the arrow-head, as indicated by the legend, is the width of the sample taken; the second figure is the percentage of tungsten trioxide; and that is the same throughout the report. The blocks of ore which are here designated, are included between these dotted lines; the material

(Testimony of Howland Bancroft.)

within these blocks is commercial ore, which has been valued; and the tabulation which occurs in this report, the method of calculation, is the method which is followed in good practice on such an ore body. I can explain that to you in detail, if you wish.

The COURT.—I don't think it is necessary, is it?

Mr. WHEELER.—It does not seem to be so.

Mr. THATCHER.—No, I will come to that a little later. I just merely wanted to explain that which don't affirmatively appear on the map itself.

Q. After you made this report, Exhibit 15, did you make any further examination of the mine?

A. I did.

Q. When, Mr. Bancroft?

A. According to my best recollection, I received a wire on the 14th of May, 1919, immediately after my return from Mexico, asking me to go to the mine.

Q. Did you go to the mine?

A. I believe I went to the mine on the 16th or 17th of May; I am not sure which date, and I am not sure it was either of those dates.

Q. How long did you stay there at that time?

A. Approximately a week.

Q. State what you did, and how, in making your examination?

Mr. WHEELER.—That is irrelevant, immaterial and incompetent, the condition of the mine the

(Testimony of Howland Bancroft.)

latter part of May; what the witness did, and the mine in its then condition, being a going concern, would not be evidence as to what its condition was on the 2d day [183—179] of April, or thereabouts.

Mr. THATCHER.—I think it would be very good evidence as to what the condition was, and the Court will see the report, or hear the witness' testimony as to what the examination consisted of, how it was made, the character of the workings which then existed. There can be no question but that examination showed accurately the condition, or approximately the condition, which existed on the first or about the first of April of that year, because of the very nature of the examination or character of the working, and the amount of development work, the stopes which existed, and the difference between the stopes as they existed upon the first examination and on the second, so that the difference will be almost insufficient as far as an ascertainment of the actual condition as it existed on April the 2d.

The COURT.—You may put the proof in, but it is the condition of the mine; I don't think there is any necessity of going into his method of doing it.

WITNESS.—Will you please tell me what you want?

Mr. THATCHER.—(Q.) Will you state what the condition of the mine was at the time you made your second report?

(Testimony of Howland Bancroft.)

A. The condition of the mine as at my second report is very clearly illustrated by Plate 5A.

The COURT.—(Q.) That shows the extent of all ore bodies? A. Yes.

Q. And assay values?

A. It does as at my examination of May, the report being transmitted on June 2d.

Mr. THATCHER.—(Q.) I call your attention to a paper marked "Plate Number 5A," and ask you if that is the plate to which you have just referred?

A. This is a larger copy of the plate which accompanies my report, or which was added to my report, and is a direct white print from a [184—180] negative of the tracing of my original field map; on this plate the coloring does not appear—in the plate which accompanies my report; the stopes and the workings are here shown in brown, as at the conclusion of my first examination; everything in brown existed, and its condition as here shown, at the conclusion of my first examination; the workings shown in blue are workings which were made subsequent to my first examination.

Q. Do they show the condition of the mine as it existed at the time of your second examination?

A. They do in so far as tonnage and average grade of the ore is concerned.

Q. Does that Plate 5A also contain on it figures or data which show the width of the vein or ore body, and the tungsten contents thereof, and the results of the sampling?

(Testimony of Howland Bancroft.)

A. It does at the point of each sampling.

Q. At the point of each sampling?

The COURT.—(Q.) Do I understand it shows the width of the ore body?

A. The width of the sample; each one of these figures, for example, represents a sample.

Mr. WHEELER.—(Q.) And the sample is taken right across the face of the ore body?

A. Across the roof, or across the floor; these samples happen to have been taken across the floor of the drift, for the reason the ore was reported to be coming in on the floor, and not on the roof.

The COURT.—(Q.) Do I understand those figures represent not merely the width of the drift, but the width of the ore body?

A. Those figures represent the width of the sample I cut, which was then obtainable in the workings.

Mr. WHEELER.—(Q.) The proposition is, if you take across the floor as you find it, it would necessarily require that the floor exactly fitted the ore body? [185—181] A. Exactly.

Q. And if it did not for any reason exactly fit the ore body, then your sample would not show the width of the ore body.

A. It would not; and the samples here taken are the maximum widths obtainable within the workings. Where the samples are evidently considerably narrower than an ordinary working, it is not proved that the entire ore body is there sampled,

(Testimony of Howland Bancroft.)

because some of the ore body may have been in one of the walls, either in the footwall or in the hanging-wall; in my notes which accompany my samples, the hanging-wall and footwall were noted as exposed, or not exposed, so that in my calculations later, I have had an opportunity to determine whether or not this is a fair representation of the ore that may be expected in this mine.

Mr. THATCHER.—(Q.) Now on this examination which you made on the 17th, state what you did with reference to examining the workings, in taking samples and making computations as to the amount of ore available, blocked out, or indicated, as may be, in the mine.

The COURT.—Is there any necessity of going into anything more than his results?

Mr. THATCHER.—If they don't object.

The COURT.—It can be taken up on cross-examination.

Mr. WHEELER.—It seems to me the telegram gave his best opinion, and we believe him to be a gentleman whose opinion is correctly stated in all circumstances.

Mr. THATCHER.—I move to strike that out as not evidence in this case, I must say counsel makes a good witness, but I would like to finish my examination, and find out what the facts are.

Q. Mr. Bancroft, as the result of your examination did you make a report to Mr. Taylor?

A. I did.

(Testimony of Howland Bancroft.)

Q. Was Plate 5A a part of your second report, or supplemental report? A. It was. [186—182]

Q. Did you also give him any written statement to accompany Plate 5A.

A. I gave him first a wire addressed to San Francisco; second, a letter, I believe occupying one page, in which the wire was quoted and in which the tonnage was tabulated, and the average grade and total tonnage was accounted for.

Q. I call your attention to what appears to be a letter on the letter-head of Howland Bancroft, consulting mining geologist, of June 2d, 1919, and ask you if that is your final and supplemental report on the mine? A. It is.

Q. Is that report correct, a correct statement of the conditions of the mine as it existed at the time of your second examination? A. It is.

Mr. WHEELER.—The objection is made at this point that the examination was made in the month of May, some time subsequent to the 2d day of April, the date with which we are here concerned; that the mine is shown by the evidence to have been a going concern, and the condition of the mine at the time of the examination by the witness is not shown to have been identical with its condition on and prior to April 2d; therefore, it is incompetent, irrelevant and immaterial, as much so as if ten years had passed.

The COURT.—I think I will allow the testimony.

Mr. THATCHER.—I offer in evidence Plate 5A.

(Testimony of Howland Bancroft.)

and the supplemental report, and ask that they be attached together and considered as one exhibit.

(Q.) Is that paper you hold the one you sent with the report, accompanying the report?

A. I could not swear to that. It is a copy of Plate 5A; I do not know whether it is the one I sent to Mr. Taylor or gave to you, but it is a true copy of Plate 5A.

Mr. THATCHER.—I would like to have these two attached together and made one exhibit. [187—183]

(The Supplementary Report and Plate 5A are marked Plaintiff's Exhibit No. 19.)

Mr. THATCHER.—I offer in evidence also this other plate, Plate 5A, which is colored, and identified and testified to by the witness.

Mr. WHEELER.—That is objected to as incompetent, irrelevant and immaterial; it does not appear that it was communicated to David Taylor.

Mr. THATCHER.—This shows the condition of the mine.

The COURT.—Was it ever communicated to David Taylor?

Mr. THATCHER.—No, sir; as it stands in its present condition, it was not communicated to David Taylor at any time during any of the matters in controversy; but I am offering it for the purpose of showing, for the convenience of the Court, the workings as they previously existed on his first examination, and as they existed upon the second

(Testimony of Howland Bancroft.)

examination; and for the further purpose of showing from the first examination made in January, and to be used in interrogating the witness, what the conditions of the mine were on or about April 2d, at the time of the representations complained of; that is the purpose of it.

WITNESS.—May I make a suggestion?

The COURT.—You may make your suggestion to counsel, if you wish.

WITNESS.—This exhibit simply clears up having to study Plate 5 and Plate 5A, which are on separate pieces of paper.

The COURT.—Well, if it was not communicated to Mr. Taylor, I don't see its relevancy at this time; but you may have it in for illustrative purposes, and that, as I understand, is your idea.

Mr. COOKE.—We would like to have the same objection as was urged by Mr. Wheeler to the June 2d report of Mr. Bancroft, considered as made to this also, on the ground it relates to conditions after April 2d.

The COURT.—I am rather in doubt about that, but I will allow you to put it in. [188—184]

Mr. WHEELER.—To make our objection specific, we urge it as hearsay.

(Plate 5A is marked Plaintiff's Exhibit No. 20.)

Mr. THATCHER.—(Q.) Mr. Bancroft, I call your attention to this plate 5A, also call your attention to your first report, Plaintiff's Exhibit 15, to your second report, which is Plaintiff's Exhibit

(Testimony of Howland Bancroft.)

Number 19; I would like to ask you whether or not as a mining engineer, and based upon your experience and the examinations which you made, more ore could have been blocked out or indicated in the workings and mines of the Nevada Humboldt Tungsten Mines Company on April 2d, 1919, than at the times of the making of your second report?

Mr. WHEELER.—Objected to as calling for the opinion and conclusion of the witness, and not relevant in the case.

Mr. THATCHER.—His qualifications have been admitted.

Mr. COOKE.—It is not a proper subject of expert testimony, and argumentative.

Mr. THATCHER.—I think it is a proper subject of expert testimony, and based upon the results of the facts as he ascertained them.

(Discussion.)

The COURT.—If the witnesses, for instance, had testified there was a shaft there forty feet deep, and his subsequent examination showed there could not have been any shaft there over twenty feet deep, it seems to me he would be permitted to show that fact, and that it would contradict the statements made by the witnesses. I don't think the admission of this testimony is absolutely clear, but I will allow it in, and counsel may have an exception.

WITNESS.—Will you please repeat the question.

(The reporter reads the question.)

(Testimony of Howland Bancroft.)

A. Why, it could have. [189—185]

The COURT.—Wait a moment. The time of the second report was in May, and the time of the first report was earlier, and your question is whether more ore could have been blocked out at the time of the first report than at the time of the second report?

Mr. THATCHER.—No, sir. My question is whether or not there could have been more ore blocked out or indicated on April 2d, than there was shown at the time of the second report, based upon the examination which he had made on both occasions.

The COURT.—Well, that amounts to simply this, That there could not have been any more ore in April than there was at the time of the last report.

Mr. THATCHER.—Yes, sir.

The COURT.—Well, that is self-evident, isn't it?

Mr. THATCHER.—Well, counsel thinks not. He was just objecting a few minutes ago to the use of the report itself upon the ground it didn't show the condition or amount of ore blocked out on April 2d. I am merely asking that one question.

The COURT.—Well, you may answer the question.

WITNESS.—It is difficult to answer your question in the way you have put it; but I assume that you want to know if more ore could have been developed had none of it been stoped?

Mr. THATCHER.—No, my question is this:

(Testimony of Howland Bancroft.)

Based upon your experience as a mining engineer, upon the examination which you made of the property in January, 1919, and upon the examination of the property and its workings as they existed and were shown in May, 1919, will you say in your opinion as a mining engineer, whether or not more ore could have possibly been blocked out or indicated on the 2d day of April than at the time of the making of your second report?

A. Well, I will say it was not. [190—186]

Q. Mr. Bancroft, did you send Mr. Poole any copy of your report? A. I did not.

Q. Did you send him any copy of part of your report?

A. I sent a copy of Plate 5 to Mr. Poole at Lovelock.

Q. Shortly after making the first examination?

A. After the completion of my first examination.

Q. Did you give to any other person connected with the company any copy of your recommendations of the plan of development incorporated in your first report?

A. I sent two copies of the Nevada Humboldt Tungsten Mines Company at Mill City, Nevada, which copies were acknowledged by Mr. Morrin.

Q. Did you send any other copies to anyone else?

A. Only to Mr. Poole.

Q. Did you at any time discuss the development plan of the mine with Mr. Poole? A. I did.

Q. When and where?

A. The first time I recall discussing the develop-

(Testimony of Howland Bancroft.)

ment plan with Mr. Poole was on the train the day after we had left San Francisco; we left on number 6, as I recall it, in the evening, and just before Mr. Poole got off at Lovelock, I believe we discussed very briefly the matter of the development which would be required in the mine. I then proceeded to the mine, and discussed at some length later with Mr. Morrin the proposed development program; and Mr. Morrin in turn discussed that with Mr. Poole, and I later discussed it with Mr. Poole. The development program proposed is indicated in my report on page 10, which contemplated sinking the shaft an additional 360 feet, continuing level number 2, driving levels 3, 4, 5, and 6, 380 feet to the southwest, and 250 feet to the northwest, and connecting these levels by raises.

Q. Do you recollect when you discussed these matters with Mr. Poole and Mr. Morrin, or about when? [191—187]

A. My recollection is that I discussed that with Mr. Morrin probably every day at the mine during the first examination.

Q. During the first examination?

A. Yes, I didn't spend all day doing it; we chatted about it.

Q. And with Mr. Poole, was that also during the first examination?

A. Mr. Poole arrived, according to my best recollection, either the second day before I left or the last day before I left, and we had a brief discussion about this program.

(Testimony of Howland Bancroft.)

Q. Have you any interest in the litigation now pending, Mr. Bancroft? A. I have not.

Q. Have you any interest in the contract which has been offered in evidence here?

Mr. WHEELER.—It seems to me we have so abundantly admitted the qualifications of this witness, it is not necessary to show lack of interest in the matter; we have admitted that he is a gentleman worthy of belief.

The COURT.—Well, he has already stated he has no interest; that covers the whole matter, doesn't it?

Mr. THATCHER.—I just merely wanted to identify the contract.

Q. You have no interest in the property or the litigation, or any matter connected with it, pursuant to any contract, or the contract which has been offered in evidence, and made Plaintiff's Exhibit 18? A. I have not.

Mr. THATCHER.—That is all. You may cross-examine.

Cross-examination.

Mr. WHEELER.—(Q.) Mr. Bancroft, what method was employed in this mine, if you observed it, when you visited it in January, 1919, in the matter of estimating values of ores; were fire assays used by the company, or pannings made?

Mr. THATCHER.—Objected to as not cross-examination. I didn't [192—188] ask him anything about the methods used by the mine or the management for the ascertainment of values.

(Testimony of Howland Bancroft.)

Mr. WHEELER.—I submit that the witness made an examination of the mine.

The COURT.—I think there would be no question about your going into those matters so far as the correctness of his report is concerned; but the assays that were used in the mine would not go to the correctness of any testimony he has given, would it?

Mr. WHEELER.—I submit the question, your Honor.

The COURT.—I will sustain the objection.

Mr. WHEELER.—(Q.) Mr. Bancroft, you were interested in the result of this option, and you laid out some work to be done; in the course of your conversations and laying out the work that was to be done was anything said or anything observed by you as to the method of estimating values as work in the mine progressed, or was intended to progress?

Mr. THATCHER.—Objected to as not cross-examination.

The COURT.—Objection sustained.

Mr. WHEELER.—Exception.

Q. Did you give any instructions or directions, or make any suggestions as to what should be done in the matter of estimating values of ores as the work in the mine which you laid down or advised, was proceeded with?

Mr. THATCHER.—Objected to as not cross-examination. The testimony of the witness is that he laid out a course of development work in the

(Testimony of Howland Bancroft.)

mine; nothing was said as to the ascertainment or determination, or how they should determine the value of the ore in the mine.

The COURT.—I will sustain the objection.

Mr. WHEELER.—(Q.) When you examined this mine in the month of May, 1919, you sent a preliminary report, it appears in which you [193—189] made an estimate of 40,000 tons of ore?

A. I sent a telegram.

Q. A telegram?

A. I would not call it a preliminary report.

Q. Very well. At any rate, that was before you had had any assays made? A. Yes, sir.

Q. And you also had previously said in the telegram that it would be absolutely necessary to have assays made? A. Yes.

Q. That is a matter that is very obvious, is it not, to anybody familiar with mines?

A. It should be.

Q. Now, with reference to your estimate of 40,000 tons in that telegram; that, I take it, was based upon what you saw when you were in the mine, supplemented by figures which you made, based upon the workings as you found them in May, 1919?

A. The estimate of tonnage.

Q. The estimated tonnage? A. Yes, it was.

Q. In order to make that estimate you examined, I suppose, the faces and the walls, the floor and the roof in the workings that you visited?

A. I examined all of the new workings that were accessible.

(Testimony of Howland Bancroft.)

Q. And in so examining them you saw with your eye what appeared to be ore, did you not?

A. In some places I was very much surprised when I got the results of the samples to find that the tungsten content was as low as the sample indicated.

Q. In other words, it looked to your eye very much better than the assaying results showed?

A. In places, yes.

Q. In places; but in making this estimated tonnage you based it upon what appeared to your eye to be ore?

A. I based that estimate on what I hoped to be ore; I cannot swear that it appeared to be ore; I know that I hoped that it would be ore; I cannot swear that it appeared to be ore, because a lot of that material in the shaft below the floor level looks like very good ore, and it contains practically nothing; in that instance on [194—190] what appeared to be ore, and I say that because I can recall that specifically.

Q. At any rate, it looked good enough to you to make a preliminary estimate of the tonnage that was there, provided the assays showed contents of 1.4?

A. The average assay of the blocks as the result of my second examination was 1.64 tungsten trioxide.

Q. What is the difference in the parlance of your profession between 1.46, or the figure you have just mentioned, which you were working to, and

(Testimony of Howland Bancroft.)

1.75; is it merely the difference between $1\text{--}3/4$ and the $1\text{--}4/10$, or approximately that?

A. 1.75 of course is $1\text{--}75/100$ per cent, and 1.64 is $1\text{--}64/100$ per cent, the difference is $11/100$ of one per cent.

Q. And which is the high? A. 1.75.

Q. What was your purpose in taking a sample entirely across the wall or face, or wherever you took the sample—floor, we will say, of the wall or the roof. A. In each instance?

Q. Yes.

A. I took samples across the entire width of the working in the event that that width did not exceed six feet; in the event that width did exceed six feet, which was true in a few instances, I took two sections, so that I believe I have no sample which was more than six feet wide; so that your inquiry would not be applicable to those samples which were taken in sections.

Q. Say the samples of each character, but you think there are none that would average more than six feet, or that would be more than six feet?

A. I think I have no record of a sample more than six feet wide.

Q. Why did you sample across the entire six feet; why not take one portion of the first six feet, within the first few inches or the first foot?

A. I did in a great many instances.

Q. You did that in a great many instances, in addition? [195—191]

A. Yes—well, I would not say in addition. For

(Testimony of Howland Bancroft.)

example, here is a sample 2.8 feet wide; presumably that is not the entire width of the working.

Q. On the other hand, it may have been all that was opened there, may it not?

A. It may have been, but presumably both walls were exposed, and there would be no object in taking bare material and adding it to the sample.

Q. But where both walls were exposed for six feet, or more than six feet, why did you take a sample across the entire face or floor or roof; why not under those conditions take a sample in the first foot and stop?

A. Well, if there was evidently noncommercial material, barren waste, that was not included in the sample; if that material was undisturbed in the ore, it may have been included in the sample, and probably was.

Q. But you apparently don't see what I want. You took a number of pieces of rock from each foot across where you took your samples, didn't you?

A. I cut my trenches approximately from three and a half to four and a half inches wide, one and a half to two and a half inches deep.

Q. Now my question is why did you go with a trench six feet long, instead of making it five or six or seven inches long?

A. My average was decidedly under six feet.

Q. In other words, you were looking for the average, and you knew it was a proposition that

(Testimony of Howland Bancroft.)

might show too rich ore if you confined your sample to a few inches or one or two feet?

A. No, decidedly not.

Q. Then why?

A. I was looking for mineable ore.

Q. And you wanted to get an average of what was there, as it was exposed; is that not right?

A. That is the object of sampling.

Q. And if you did not take your sample in that thorough way across the entire face, floor, wall or exposure, you might get a result [196—192] which would show too rich a result, isn't that it?

A. If I didn't do that I would not get an average of the ore there exposed.

Q. Exactly; with the result that for example, it might show 2.5, when in reality if you took clear across the whole trench, as you took it, it might show one, is not that it?

A. I have some samples which may have averaged more than 2 per cent.

Q. Averaged one and two per cent?

A. Averaged more than two per cent.

Q. I think you misapprehend my question; it is perhaps too obvious, and does not require a reply.

A. I am not trying to evade you, I will tell you that.

Q. I know that perfectly well. I want to get at the reason for taking these six foot trenches, and taking an ore sample from that, and having your assay made?

A. Leaving out the six feet, because my average

(Testimony of Howland Bancroft.)

is under six feet decidedly, you want to know the object in taking the samples?

Q. Why take them clear across, why not take simply an inch or two of trench, instead of taking six feet of trench?

A. The ore body as mined was demonstrated to be considerably more than an inch or two wide.

Q. Again I think you misapprehend. Just imagine you are standing facing the ledge or the vein, the hanging-wall and the foot wall; now you take a sample across that, and we will call it six feet, why I say, do you take the sample to get your spoil from a trench that is six feet wide, going from wall to wall, instead of taking only a foot?

A. Well, a foot would have nothing to do with the balance of the five feet.

Q. Exactly; and it might be if you so took your sample, that you [197—193] would find a very high or very low result, which would differ entirely from the average which you would obtain if you took the spoil from the entire six feet?

A. That would not be good sampling practice.

Q. Of course it would not be good sampling practice, we all know that. Read the question, please.

(The reporter reads the question.)

A. If I took samples from a part of an exposure that result would undoubtedly differ from the result of the entire exposure of the ore body.

Q. Exactly; and it is quite possible that you would take a sample which would average one, or less than one, when you took your spoil from the

(Testimony of Howland Bancroft.)

entire six feet, whereas if you took your sample but from one foot of a similar trench the assay might run to 1.75 or two, or even more? A. It might.

Q. Now I want to ask you with regard to the panning practice in mines, tungsten mines as well as others; that consists in what, refining?

Mr. THATCHER.—I object on the ground it is not cross-examination.

Mr. WHEELER.—If there is any question, we will make the witness ours.

The COURT.—Very well; I think for that line of questioning you may make the witness yours, if you wish to.

A. The panning practice, I believe as most expertly practiced is the vanning method, which is accomplished by Cornishmen in the Cornish tin mines, and that is accomplished on a van shovel; and that work in the hands of an expert is frequently quite accurate. The vanning would be comparable in a way to panning, although I believe from the records of my own assistant engineers that I have had [198—194] vanning and panning at great length in Bolivia, the panning is not nearly as accurate as vanning.

Q. In order to even approximate the method that you adopt in practice of cutting a trench and taking a spoil, it would be first necessary to cut a similar trench and take a similar spoil, and place in what you would call the pan, would it not?

A. To approximate the same results, yes.

Q. So unless a man who was following the pan-

(Testimony of Howland Bancroft.)

ning process cut trenches six feet on an average where the vein was wide enough, or less than six feet where the vein was not wide enough, there would be no necessary approximation between your result and the results which he would obtain, would there?

A. I can even go a little stronger than that; unless he cut his samples in approximately the same samples, in the same widths which I used, his results would not approximate.

Q. That is exactly the proposition which I wish to bring out. I now return to the cross-examination. When were you first asked after your January examination and your February report, 1919, to visit this property?

A. My recollection is that Mr. Taylor asked me—Mr. David Taylor asked me to come to Denver, and I believe asked me to stop off at the mine en route; I am not sure of it, but if my correspondence will show that I can answer your question.

Q. It will show it?

A. If it does; I have not reread it.

Q. Examine it, please, with Mr. Taylor, because we want to fix those dates.

(At 12:00 o'clock a recess is taken until 1:30 P. M.)

AFTER RECESS—1:30 P. M.

Cross-examination of Mr. HOWLAND BANCROFT Resumed.

Mr. WHEELER.—(Q.) I asked you concerning some correspondence, [199—195] will you give

(Testimony of Howland Bancroft.)

me the results of your examination as to when you were again asked to examine this property?

A. Asked to again examine it, or again to go to the property?

Q. Again to go to the property.

A. I found a letter, I think it has a date of March 14th.

Q. Having refreshed your recollection, would you give us the date?

A. I think it is March 14th, but it is right on the letter.

Q. What you have refreshed your recollection from is the following passage in a letter received by you from David Taylor—

Mr. THATCHER.—Objected to as not cross-examination.

Mr. WHEELER.—Oh, yes it is. (Q.) At any rate, you received the request, and now you say at about what date?

A. March 14th, the letter was written; I do not know when that letter arrived, because I was in Arizona, later in San Francisco, and later in Mexico.

Q. When were you next after March 14th to visit the mine?

A. My best recollection is the 14th of May.

Q. What time did you return from Mexico in the month of March?

A. I did not return in the month of March at all.

Q. The letter you referred to must have been received by you after your return from Mexico?

(Testimony of Howland Bancroft.)

A. Well, that is difficult for me to say; I would have to see the letter to see where it was addressed, and then it would be a surmise as to whether that was forwarded to me in Arizona or in San Francisco.

Q. At any rate you did the first portion of April return from Mexico, didn't you?

A. No, I went to Mexico on the 5th of April.

Q. And you were unable to visit the property before going, is that it? A. I was unable to.

Q. Under the contract offered here in evidence, you were to have an interest in these properties; did you have any interest in the option of April 2d; I say the option, under the contract exhibit "C"? [200—196]

A. I assume I was to have the same proportionate interest in the April—well, in the April agreement.

Q. Was that matter subsequently changed? It appears that you no longer have any interest in the matter.

A. I refuse to testify as an expert for anybody as an interested party, so I changed my relationship, and was paid for my time during the examinations of the mine, and no longer am interested in the property.

Q. When was that change made? A. Actually?

Q. Yes.

A. About the 29th of March of this year.

Q. Of this year? A. Yes.

Q. So that up to the 29th of March, you contin-

(Testimony of Howland Bancroft.)

ued to be an interested party? A. I did.

Q. Prior to that time, however, the services you had rendered had been rendered pursuant to the original arrangement, and up to that time had not been a matter of bargaining between you?

A. No.

Q. In other words, up to March of this year, you had expected to contribute your services in examining the property, pursuant to the original agreement?

A. No, I had not. I agreed to make one examination, which I proceeded to make in January, 1919.

Q. Was it not a matter of some dispute or discussion between you and Mr. Taylor as to whether you were not obligated to make more than one examination?

A. There was some discussion about the matter.

Q. When did that take place?

A. The discussion about the matter, I believe, took place in the summer of 1919, the summer or fall.

Q. Was there not some question upon that subject prior to your going to Mexico?

A. I think not, prior to my going to Mexico.

Q. Are you positive about that, Mr. Bancroft; I would like you to be very clear. [201—197]

Mr. THATCHER.—I suppose prior to going to Mexico, you mean April, 1919?

Mr. WHEELER.—I am referring to the trip that he took in April, 1919, yes.

WITNESS.—I think there was not.

(Testimony of Howland Bancroft.)

Q. But there was a request made of you to go and examine the property prior to that time, wasn't there, or to stop off there?

A. Yes, as evidenced by the letter.

Q. And you received that letter sometime before you went to Mexico on the 5th of April?

A. I think I must have.

Q. And what route did you take on going to Mexico; did you come by the way of San Francisco?

A. I was examining a property in Arizona, a tungsten mine, it happened to be, at the time this letter was written; I concluded that examination on the 28th of March, 1919, and proceeded direct to San Francisco; my clients, who were going to Mexico with me, desired to sail on the 1st; they put their sailing off until the 5th, providing I would then accompany them, and I accompanied them on the 5th, having arrived in San Francisco the night of the 31st or morning of the 1st, or thereabouts; I did not go back to Denver.

Q. The request, however, was made of you to visit the property on your way out to San Francisco?

A. I believe the conclusion was I was to stop at the property on my way to Denver, it then being supposed I would return to Denver before going to Mexico.

Q. Now, subsequently, in the summer or fall, you had some discussion with Mr. Taylor, and the purport of the discussion was that he considered you were bound under your arrangement, to make

(Testimony of Howland Bancroft.)

more than the first examination of the properties, and that you were not entitled to compensation for your examination made in May, is that not true? [202—198]

A. No, we had no discussion about that; I made the examination in May under the same conditions that I made the examination in January.

Q. That is to say you were—

A. (Intg.) While an interested party.

Q. You were an interested party, and to be compensated out of the 20 per cent which you expected to get? A. Precisely.

Q. And it had been understood you would examine the property in the event of any change in that option, had it not?

A. I don't know whether it was understood or not; I did not understand I was to be called upon indefinitely to continue to go to that mine.

Q. However, Mr. Taylor said that was his understanding, didn't he?

A. He did, but he was decidedly mistaken.

Q. I understand. Did he not claim to you he was intending to rely on you, and that was why he had given you the 20 per cent?

Mr. THATCHER.—Object on the ground it is not cross-examination as to what Mr. Taylor's reliances are on Mr. Bancroft; there is no testimony here by this witness as to whether he did or did not rely.

The COURT.—These questions are going simply to the witness' interest in this litigation?

(Testimony of Howland Bancroft.)

Mr. WHEELER.—Precisely. When the interest began and how long it lasted.

Mr. THATCHER.—I don't object to any testimony as to the witness' interest, how long it lasted or what the character; but the question as I heard it went to the effect that Mr. Taylor was relying upon Mr. Bancroft, and called for the conclusion of the witness, and upon entirely different subject-matter, on the question of reliance.

The COURT.—I don't see how that shows his interest in this litigation; it might show Mr. Taylor's interest. [203—199]

Mr. WHEELER.—It would show Mr. Taylor's conception of the past relations, and it would then be for the Court to say whether at that particular time he was interested. The witness understands he was not interested to the extent that he was to make an examination of the mine the second time.

The COURT.—He says he did make it the second time, under the same conditions as the first; and he did it under the theory that he was interested in the property; and those examinations were made prior to his parting with his interest in it, were they not?

WITNESS.—They were.

The COURT.—I think I will sustain the objection to that question.

Mr. WHEELER.—(Q.) You had certain photo-stats made of a map, one of which you annexed to the report which you gave to Mr. Taylor in January or February, 1919; do you remember how many

(Testimony of Howland Bancroft.)

copies you had made? A. Of the Plate 5?

Q. Yes.

A. I do not know the exact number, but I can account for ten.

Q. And you had some extra copies in your office in Denver, did you not? A. Yes.

Q. And your office really was an office that was immediately adjoining, or was occupied by you in common with Mr. Taylor at that time, wasn't it?

Mr. THATCHER.—Objected to as not cross-examination.

Mr. WHEELER.—This is on the map, your Honor.

Mr. THATCHER.—It is apparently not for the purpose of testing this witness' statement on the witness-stand.

The COURT.—Oh, I will allow that question.

A. Not occupied in common with Mr. Taylor.

Mr. WHEELER.—(Q.) They were adjoining rooms?

A. Mr. D. W. Brunton, Mr. F. M. Taylor, Mr. D. R. C. Brown, Mr. [204—200] David Taylor and I, had a suite of offices in Denver; mine was one of the suite.

Q. These photostat copies were there?

A. Yes, in one of my map cases.

Q. They were there where they were accessible, were they not?

Mr. THATCHER.—Objected to as not cross-examination.

The COURT.—I will sustain the objection to that.

(Testimony of Howland Bancroft.)

Mr. WHEELER.—(Q.) Mr. Taylor referred to by you, is the father of the plaintiff. A. Yes.

Q. What relation did your room bear to the plaintiff's office?

Mr. THATCHER.—Objected to as not cross-examination.

The COURT.—The objection will be sustained.

Mr. WHEELER.—(Q.) Well, we will make the witness ours for this purpose, your Honor, as he is going away.

The COURT.—Very well.

Mr. WHEELER.—(Q.) What was the location of your office with regard to the office of the plaintiff Taylor?

Mr. THATCHER.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—I will allow that question.

A. Mr. David Taylor's office had one wall which was also one wall of my office; in other words, they fronted on a passage-way and were entered from the passage-way by different doors, and had no doors which opened between.

Mr. WHEELER.—(Q.) Was there any drafting table in your office?

A. My map case is arranged with a drafting table on top of it, but it has not been so used to my knowledge.

Q. You have a library of technical books in your office? A. A large one.

Q. As a matter of fact, were the two offices accessible to each of [205—201] you, or was your

(Testimony of Howland Bancroft.)

office an office that was locked while you were away?

A. I doubt if it was locked, but it was my private office; it don't belong to anybody else.

Q. Whether or not it was locked and not accessible while you were away, you do not know?

A. I do not know.

Q. Did you yourself lock it when you were away?

A. I locked my files.

Q. Locked your files? A. Yes.

Q. But not the office itself? A. Not the office.

Q. And there would be no difficulty in getting from one of the other offices then, into yours?

A. Oh, no, there was free access.

Q. Examine exhibit 15, if you please.

The COURT.—Is he still your witness?

Mr. WHEELER.—Yes. It does not make any difference.

Q. Exhibit 15 is the Bancroft report, so called; state whether or not that is the original report as signed by you, and whether you know that is the original map annexed thereto. I will resume the cross-examination in asking this question.

The COURT.—You go back to the examination in chief?

Mr. THATCHER.—I would like to ask a question in cross-examination of the direct. (Q.) You had a suite of offices all there together, yourself, Mr. Brunton, Mr. F. M. Taylor and Mr. David Taylor? A. And Mr. D. R. C. Brown.

Q. And Mr. D. R. C. Brown. Mr. David Taylor

(Testimony of Howland Bancroft.)

used offices with Mr. F. M. Taylor at that time, did he not, or do you recollect?

A. I knew nothing about that.

Q. Your office was open and could be used by any one there at any time they wanted to, could it?

A. Yes.

Mr. THATCHER.—That is all.

Mr. WHEELER.—I am now resuming the cross-examination. [206—202]

WITNESS.—There is no doubt about this text, absolutely no doubt about it; this is on my own paper.

Q. As to the text there is no doubt; how as to the map annexed thereto?

A. I make the same qualification that I made this forenoon regarding the addenda in pencil.

Q. That qualification is referring to the text and not referring to the map? A. Yes.

Q. Now, please refer to the map and state whether or not you are prepared, without qualification, to say that that is the map as originally annexed with some addenda now placed upon it, not a duplicate and not a similar photostat, but whether it is the precise document?

A. This would lead me to believe that it is, because these maps were put in these covers, and certainly the map which was put in the original had these pointers on the back of the map.

Mr. WHEELER.—I move to strike out that portion of the answer, "This would lead me to believe," and from there forward.

(Testimony of Howland Bancroft.)

Mr. THATCHER.—I think that is very responsive to the question.

The COURT.—That may go out.

WITNESS.—I could not swear to that, as I have no mark of identification on this particular map; I can, however, swear that the photostat here is a copy of my Plate 5.

Mr. WHEELER.—(Q.) Yes, I understood that, but I was talking now with regard to this particular instrument. I think I have your answer. When you made your first inspection of this property you had some written report, had you; that is, prior to the report of January or February, 1919?

A. Yes, I had a report by Mr. Hyder.

Q. Did you yourself make any report at that time, or any statement regarding the property?

A. I did, but not to Mr. Taylor.

Q. Did that statement or report come to the observation of Mr. Taylor?

A. I think not. [207—203]

Q. Did Mr. Hyder's report come to the observation of Mr. Taylor?

A. Presumably; I do not know.

Q. What became of Mr. Hyder's report?

A. I have it.

Q. We would like to inspect it, and counsel I am sure will not take up your time or ours, but regard it as sufficient identification in case we want to use it.

Mr. THATCHER.—I have no objection.

Mr. WHEELER.—(Q.) Did you make any oral

(Testimony of Howland Bancroft.)

reports to Mr. Taylor at any time with regard to this property, or discuss the property with him at any time subsequent to the report of your inspection made in January or February? A. Yes.

Q. When?

A. I cannot tell you the actual dates, but I certainly discussed the property with him on a number of occasions.

Q. In the months of February, March and up to the 5th of April, 1919.

A. It must have been prior to the 10th of March, because I left Denver on the 9th, I believe, of March, and did not return until the 29th of May.

Q. When did you first hear or learn of the contract, exhibit "C," of the 2d of April?

A. I am not sure that I have ever seen that.

Q. When did you first hear that such an option had been obtained, or such a contract?

A. I must answer that with qualifications, because I am not certain of this.

Q. When did you first hear that a modified arrangement had been made?

Mr. THATCHER.—Object on the ground it is not proper cross-examination. I don't think I asked this witness a question concerning the second contract; I asked him with reference to the first.

Mr. WHEELER.—He was to participate in it, and was interested at that time, and we want to know when it was first communicated to him.

(Testimony of Howland Bancroft.)

The COURT.—I will allow the question.

A. I knew an arrangement had been made.

Mr. WHEELER.—(Q.) From whom did you learn it?

A. Mr. David Taylor sent me a telegram, but I am not sure that he specified the contract; in fact, I do not remember what he said in the telegram.

Q. Have you a copy of the telegram?

A. Probably.

Q. I would like to have it please.

(The telegram is handed to counsel for defendants.)

Q. Is the telegram dated April 3d, signed David Taylor, the telegram you have just referred to which gave you the information? A. It is.

Mr. WHEELER.—We offer it in evidence, and ask that it be marked out Exhibit "O."

Mr. THATCHER.—We object on the ground it is incompetent, irrelevant and immaterial, and not proper cross-examination.

The COURT.—It is the question as to his interest in the property and in the deal. It will be admitted.

(Telegram dated April 3, 191—, from David Taylor to Howland Bancroft is marked Defendant's Exhibit "O.")

Mr. WHEELER.—I will read it. (Q.) It was April, 1919, that you received it, was it not?

A. Yes.

Mr. WHEELER.—(Reads: "Denver, Colo., 313 P April 3 191. Howland Bancroft, Care B. L.

(Testimony of Howland Bancroft.)

Thane, Crocker Bldg., San Francisco, Calif. Have closed alternative option whereby I am to raise funds to liquidate corporation indebtedness as seven per cent preferred stock redeemable from first profits netting company minimum ninety-five. Company to be reorganized or assets transferred to new corporation as required by me I receive sixty-two per cent common stock interest present owners receive thirty-eight per cent. [209—205] Sufficient interest to place preferred stock must be supplied from my share. Option still in effect as alternative but both options expire June sixteenth Wrote Thane yesterday enclosing copy new agreement. David Taylor.”

Mr. WHEELER.—Have you gentlemen a copy of the letter from Mr. Thane referred to therein?

Mr. THATCHER.—I will have to look, Mr. Wheeler.

Mr. WHEELER.—(Q.) When after receiving that telegram did you next see Mr. Taylor, plaintiff herein? A. The end of May, 1919.

Q. Not until after you had made the examination of May? A. No.

Q. Did you have any correspondence with him touching this proposition, or an examination to be made by you, including any telegrams or any telephonic communications, intermediate to those periods, other than those introduced in evidence here this morning?

A. I acknowledged the receipt of his wire by

(Testimony of Howland Bancroft.)

letter. The next communication which I recall from Mr. Taylor was the 14th of May, which was a telegram.

The COURT.—Was this telegram last introduced, offered for any other purpose than to show the interest of the witness in the deal?

Mr. WHEELER.—It is offered, your Honor, to show the interest of the witness in the deal; we claim it to be admissible for that purpose. I understand the rule to be that unless there is a limitation placed upon evidence that is offered, that it is in the case for every purpose for which it is relevant. It might be, and is possible, that it would be an item tending to show in addition to the matter of the interest of the witness, the relations of the parties, from which we might ask your Honor to infer that they were such that Mr. Taylor was probably depending upon Mr. Bancroft at this time.

The COURT.—Well, I think it will be admitted for the purpose [210—206] for which it was offered; that is, to show the interest of this witness in the litigation.

Mr. WHEELER.—If it is to be confined to that, it could never be used for any other purpose by us in the case, according to your Honor's ruling.

The COURT.—I am rather in doubt about its being admissible for any other purpose, over the objection of counsel.

Mr. WHEELER.—Then if that is so, your Honor, we ask for the benefit of an exception.

(Testimony of Howland Bancroft.)

The COURT.—Of course that ruling is made on the theory it is not cross-examination, and therefore it is admitted with that limitation, simply because it is not cross-examination. I am not holding that that testimony would be irrelevant by any means.

Mr. COOKE.—Why not have the witness our witness for that purpose, and remove the restrictions.

Mr. WHEELER.—It is immaterial to me how it comes in, on cross-examination or as a part of our case.

Mr. THATCHER.—I object to it now as not cross-examination.

Mr. WHEELER.—If you object to it as not cross-examination, then for a moment the witness can be deemed ours, and we offer it with him upon the stand.

The COURT.—Then it will be admitted as a part of your case in chief.

Mr. WHEELER.—As a part of our case in chief, yes.

Mr. THATCHER.—I would like to object on the ground it is not competent, relevant or material to any issue in this case.

The COURT.—I think it tends to show that the plaintiff was relying on this expert at the time the telegram was written, and for that purpose it is admissible as part of their case in chief.

Mr. WHEELER.—(Q.) Prior to January 16th did you make any report of any kind to Mr. Taylor?
[211—207] A. Yes, I did.

(Testimony of Howland Bancroft.)

Q. Was it in writing, or orally? A. Orally.

Q. State what the report was.

A. The conversation which I had with Mr. Taylor regarding this property would hardly be called a report, although I did discuss with him the apparent merits and demerits of the property as then understood by me, which opinion I had as a result of having spent one day upon the mine in November, and having read this report of Mr. Hyder's.

Mr. DAVIS.—Q. You mean November, 1918?

A. Yes, I should have said so.

Mr. WHEELER.—(Q.) Will you please state what the report was; give us the substance of it as closely as you can?

A. It would be very difficult for me to give you any kind of a summary of what I told Mr. Taylor early in January, other than it was a proposition which appeared to be of interest to me, and it might be of interest to him.

Q. Did you talk tonnage or values at that time to Mr. Taylor? A. I may have.

Q. Have you any recollection at all upon the subject?

A. Well, I could not tell you whether I talked tonnage or values with him; I probably said something about the possibilities of the mine.

Q. What is that you can't remember?

A. I must have, because we would not have anything to talk about otherwise.

By Mr. COOKE.—(Q.) Just a question. From the information that you had at that time, Mr.

(Testimony of Howland Bancroft.)

Bancroft, prior to January 16, 1919, are you able to state whether you discussed any certain number of tons as being in the mine, or probably being in the mine? [212—208]

A. I would probably not say anything about tonnage being developed, because I had taken no samples whatever.

Q. At that time, I mean prior to January 16, 1919, did you have any knowledge of the extent of the ore that was exposed, blocked out in the mine?

A. No definite knowledge of my own taking; I simply walked through the mine one day in November, 1918, and I would have no specific knowledge of my own.

Q. Did you have any definite knowledge at that time from your own observations or tests as to the tungstic acid or content in the ore?

A. I had made no tests; it seems to me we were informed they had shipped a certain number of tons to Mill City by wagon, or hauled them by wagon to Mill City, and shipped them to Toulon; and I believe we had the results of the mill operations on that ore.

Q. Then as I understand it, Mr. Bancroft, prior to your examination beginning January 17th, 1919, you had no specific knowledge as to the tonnage exposed in the mine, or as to the value per ton?

A. No specific knowledge.

Q. And you discussed no specific values with Mr. Taylor prior to that time?

A. Not as having been developed.

(Testimony of Howland Bancroft.)

Q. Yes. A. Exactly.

Mr. WHEELER.—(Q.) Did you make any guesses?

A. Oh, I think we scribbled a lot in the way of trying to arrive at what might be possible, but that would have absolutely no value because it was simply what we thought might be, and what some of us hoped would develop.

Q. What guesses did you make and communicate to Mr. Taylor?

A. I do not know, if any specific guesses.

Mr. WHEELER.—That is all. [213—209]

Redirect Examination.

Mr. THATCHER.—(Q.) Mr. Bancroft, counsel examined you this morning as to the words 1.40 per cent tungsten or 1.40 recoverable; is there any difference between assay values of say 1.75 per cent, and the term 1.75 per cent tungsten recovered, or tungstic acid recovered?

A. The amount of tungsten in each instance is the same; the ore in the mine averaging 1.75, you would not recover all of that by treatment.

Q. When the word recoverable is used, it means allowing for the loss in milling or concentrating; and that is covered in your report and allowances made?

A. Most decidedly, if I say recoverable it means that.

Q. And where the word recoverable is used, it means on a basis of 80 per cent recovered; is that it? A. That is what it means.

(Testimony of Howland Bancroft.)

Recross-examination.

Mr. WHEELER.—(Q.) The figures when you put them on the map indicate the return of the assayer, or amount recoverable?

A. The return from the assayer.

Q. It is a fact, is it not, Mr. Bancroft, that after you had made your examination in May, from your first returns from the assayer you estimated upwards of 21,000 tons in the mine, but later on, after you had the final returns, you reduced that to upwards of 18,000 tons; is that right?

A. Yes, sir; but I had not a sufficient amount of information to have concluded my calculations; that was a preliminary estimate.

Q. The preliminary estimate, in other words, was about 3,000 tons higher than your final estimate?

A. As I remember, it was about 21,000 tons.

Q. That accounts then for the apparent discrepancy in some of the exhibits here, between the first suggestion of 21,000 and later [214—210] suggestion of a smaller amount?

A. Yes, I should like to tell you why.

Q. It is a matter of no consequence; I simply want to clear up that matter in the record; that it was not an error in the telegram but a change on your own part.

Mr. WHEELER.—That is all.

Mr. THATCHER.—(Q.) Why was that; will you explain?

A. I was being urged continually to give some

(Testimony of Howland Bancroft.)

result, some determination of the tonnage, and the first assays which were received led me to believe that such a tonnage could be expected; when the final assays, in other words, when the list of assays of samples was complete, there was more non-commercial ore than had at that time appeared, so that the final calculations as they appear in my report are the correct calculations for that second examination.

Mr. COOKE.—(Q.) 19,800, isn't it?

A. I must say I don't remember.

Mr. WHEELER.—(Q.) At any rate, as I understand, there was an error in your calculations?

A. No error.

Q. No error, but what?

A. One was a preliminary estimate; the 2d of June report was a final report.

Mr. WHEELER.—That is all.

Mr. THATCHER.—That is all.

(By agreement of counsel Mr. Bancroft is excused from further attendance on Court.) [215—211]

Testimony of David Taylor, for Plaintiff (Cross-examination—Resumed).

Cross-examination of Mr. DAVID TAYLOR
Resumed.

Mr. WHEELER.—(Q.) Mr. Taylor, when you went to New York in 1919, after your visit to the mine, do you remember what day you started and what day you arrived in New York?

(Testimony of David Taylor.)

A. I can tell you from my diary.

Q. I wish you would.

(Witness examines diary.)

Q. Started, I mean, from Mill City or Lovelock, as I understood you testified before, that you went straight through without stopping in Denver.

A. I left Lovelock on Sunday, the 27th.

Mr. COOKE.—(Q.) That is May?

A. Sunday, April 27th; arrived in New York Thursday, May 1st.

Mr. WHEELER.—(Q.) Where on the way did you meet Mr. Thane?

A. You mean where did I first actually see him?

Q. Yes.

A. I saw him at breakfast Friday morning after leaving Lovelock.

Q. At what place?

A. At breakfast in the dining-car.

Q. And he travelled on with you to New York?

A. Yes.

Q. At that time you were expecting to interest New York capital in this transaction, were you not, or hoping to? A. We were hoping to, yes.

Q. And can you give us the date on which your hopes in that connection were abandoned, and you determined to go ahead with Mr. Thane?

A. They were never specifically abandoned.

Q. Never finally abandoned; you use the word specifically; the hope never was given up, you mean?

A. No, because there was information given us

(Testimony of David Taylor.)

by several people that they would take an interest after the transaction had been consummated.

Q. After the what?

A. After the transaction had been closed. [216—212]

Q. I call your attention to Defendants' Exhibit "A," a letter from Mr. Thane to Mr. Bayless, which you identified as being familiar with, dated May 14, 1919, and particularly to this passage therein: "In anticipation that we will succeed in raising the necessary money to close the deal with the Nevada Humboldt Tungsten Mines Company on May thirty first it is necessary that we should have certain information in such shape that there will be no question about carrying out the transaction." Now, on that date I call your attention to the fact, May 14th, you say "In anticipation that we will succeed in raising the necessary money to close the deal;" were you then still expecting or anticipating that you would raise the necessary money in New York with which to close the deal?

A. Not all of it.

Q. But you were expecting to raise a portion of it in New York?

A. Mr. Thane was expecting to raise a portion of it.

Q. What were you expecting to do in New York with the people you had dealt with, on the 14th day of May, 1919?

A. I could not tell you exactly what I was expecting on that date.

(Testimony of David Taylor.)

Q. At any rate you expected still, on May 14th, 1919, to get some New York capital in, did you not?

A. I hoped to.

Q. And you were proceeding upon that basis, is that right?

A. I was proceeding on that basis throughout.

Q. You had not on that date definitely determined that you yourself would advance any designated or named portion of the amount, had you?

A. Not any specific amount as far as I know now.

Q. I call your attention to defendants' exhibit "C," a letter from David Taylor to R. Nenzel, dated May 20, 1919, and particularly to the following passage therein: "If the auditor's report of the books; Bayless' report on the title; and Bancroft's examination checks up to what we expect Thane and I personally expect to go [217—213] through with the deal"; was it the fact that intermediate to May 14th and your writing of this letter on May 20th, you had determined to go forward with the deal, advancing your own money, whether you obtained money in New York or not?

A. I don't see the passage you read in this letter.

Q. It begins with the words "If the auditor's report of the books."

A. What was the question, please.

(The reporter reads the question.)

A. I would say from that letter it was; we had always expected that we would eventually

(Testimony of David Taylor.)

be able to place some of that stock in New York.

Q. That is, after the deal was closed?

A. Yes, Mr. Thane thought he could beforehand; I had several people who said they would probably take some later.

Q. The point I want is this, I want to get simply at the facts of the matter; when on May 14th you prepared to send Mr. Bancroft forward you then expected to raise the money, or a considerable portion of it, in New York, and you had given that up, as I understand it from your testimony, by the 20th, when you wrote the letter, Exhibit 10, and expected that Mr. Thane and yourself would go ahead with the deal, is that right?

A. Not entirely, no, sir.

Q. Not entirely but only in this sense; not entirely, that you still hoped that later on when the deal was closed some New York people would come in, is that it?

A. No, sir, we hoped right along that some New York people would come in before the deal was closed.

Q. Then will you explain to the Court what you intended by this passage in this letter of May 20th, Exhibit "C"; "If the auditor's report of the books; Bayless' report on the title; and Bancroft's examination checks up to what we expect, Thane and I personally [218—214] expect to go through with the deal."

A. It seems to me that is very clear.

(Testimony of David Taylor.)

Q. What did you mean by "personally expect to go through with the deal"?

A. That Mr. Thane and I personally expected to put up the money to go through with it.

Q. That is exactly what I am asking about. So you did expect, you and Mr. Thane personally would put up the money when you wrote this letter?

A. You mean we expected to put up the money as a definite investment of our own, or advancing it; it seems to me there is a great difference.

Q. Did you expect to advance the money yourselves? A. That is what this letter says.

Q. And the fact is at the time you wrote that letter you had given up any expectation of getting New York capital, hadn't you? A. I had not.

Q. Well, what did you mean by saying in the letter, nobody in the east wanted to tackle the proposition unless they had control, and we were unwilling to give that up, coupled with the statement, "Thane and I personally expect to go through with the deal?"

A. Possibly nobody is a strong word for that. As I testified yesterday, as I remember now, there was one particular person who would not go through without taking control; now if we were to have 62 per cent of that stock, and we had to give control with 51 per cent to somebody else, there would not be much left to us for our services in promotion.

Q. Did you or did you not mean to say in that

(Testimony of David Taylor.)

letter that nobody in the east would come into the deal unless you would give up control, and that therefore you and Thane personally had concluded to go on with the deal?

A. No, sir, I should say I did not mean that nobody in the east [219—215] would absolutely.

Q. Well, what was the fact, regardless of what you meant by your expression in your letter; was it the fact that you and Thane did expect personally to go on with the deal?

A. We expected to go on there and advance the money.

Q. Then you had concluded to advance the necessary money after failing in the east to get people to put it up, is not that so?

A. We had not failed at that time, but concluding and expecting are two different things.

Q. Up to that time you had not succeeded in getting one dollar in New York, had you?

A. No, sir.

Q. And therefore you expected to put up every dollar that might be necessary to supplement your father's promised subscription, and Mr. Brown's promised subscription, did you not?

A. Will you repeat that, please?

(The reporter reads the question.)

A. If before it was necessary to have money to put up we got no money anywhere else, we did.

Q. When did you determine that you would do that? A. I could not tell you exactly.

(Testimony of David Taylor.)

Q. That letter is dated May 20th, did you reach that conclusion intermediate to the 14th day of May and the time that you wrote the letter on the 20th? A. I could not tell you, sir.

Q. I again call your attention to the telegram to Mr. Bayless, Defendants' Exhibit "A"; "In anticipation that we will succeed in raising the necessary money to close the deal," dated the 14th day of May; were you not on the 14th day of May still expecting to raise the money in New York, and did you not reach the conclusion that you and Mr. Thane would personally advance the money after you had failed in New York, before you wrote that letter dated the 20th? [220—216]

Mr. THATCHER.—If the Court please, I want to object to the examination as not proper cross-examination, and interrogating this witness about Thane's telegram and Thane's declarations, which are not Taylor's declarations.

Mr. WHEELER.—The witness has identified the telegram.

Mr. THATCHER.—Yes, the witness has identified the telegram; Thane's expectations might have been one thing and Taylor's an entirely different thing. I think it is perfectly proper to inquire into Mr. Taylor's attitude in the matter, but not with reference to what Mr. Thane had said.

The COURT.—I will allow the question. Of course the witness understands that this is Thane's telegram. Proceed.

WITNESS.—May I have the question?

(Testimony of David Taylor.)

(The reporter reads the question.)

A. I could not tell you, sir, the exact date at which we reached any definite conclusions about it.

Mr. WHEELER.—(Q.) This at least you can tell me, can you not; that you had not arranged or prepared to advance any specific amount by the 20th day of May?

A. After the 20th day of May I was prepared to advance a considerable amount, if it was necessary.

Q. Answer my question, please. I ask that the answer go out as not responsive to the question, your Honor.

(The reporter reads the question.)

Mr. WHEELER.—If that is so, I was mistaken. The witness' answer may stand. (Q.) Had you at that time prepared even to advance a specific amount; by that I mean had the number of dollars and cents to be placed into the deal by you been arrived at? A. Not specifically, no, sir.

Q. You were still hoping, were you, up to the 20th day of May, [221—217] and after the 14th day of May, that you would succeed in getting eastern capital to contribute, not after the deal was closed, but to the deal?

A. I don't remember the exact dates that I hoped one thing or another.

Q. Can you say when you abandoned the expectation that eastern capital would come into the transaction before the deal was closed?

A. No, I cannot.

(Testimony of David Taylor.)

Q. At the time that you telegraphed to Mr. Bancroft to come on and make an examination, had you yourself agreed to or placed in this transaction any sum of money whatever?

A. Had I agreed with anybody else to subscribe any definite amount of stock, do you mean?

Q. Yes. A. Not irrevocably agreed, no, sir.

Q. What say?

A. Not irrevocably agreed, no, sir; my impression is that Mr. Thane and I said to each other, and to various people from the beginning, that we would each take twenty-five thousand, and possibly more.

Q. From the beginning, you mean from the day that you talked the matter over on the train?

A. That is my impression; that is the first time that Mr. Thane and I—

Q. (Intg.) And that was the day on which Mr. Thane said Mr. Bancroft or some one should make an examination of the property, was it?

A. I don't know whether it was the exact day or not; it was within a day or so.

Q. At any rate you did not understand that Mr. Thane at any time had agreed to advance one cent in this matter, or cause it to be advanced, unless there should be an examination made of the property?

A. I am not sure whether that subscription was made first or last. [222—218]

Q. At any rate they were almost contemporaneous, weren't they?

(Testimony of David Taylor.)

A. I should say within a few days of each other, yes; whether Mr. Thane said specifically he would not go in at that time without a report, or whether that came a day or so later, or how it was, I don't remember.

Q. You testified that that conversation did take place on the train, I believe?

A. My impression is it did.

Q. And it must have been before the first day of May, because you arrived in New York on that day, is that right?

A. If it was on the train it was, yes.

Q. Now up to the time that you had the conversation with Mr. Thane in which he spoke to you of the necessity of having an examination made, just what money had you spent in this transaction?

A. The exact amount up to that time?

Q. If you can give me the exact amount up to that time.

A. I cannot tell you exactly, because I don't remember the exact time.

Q. What say?

A. I don't remember the exact time, I therefore cannot tell you the exact amount up to such time.

Q. Do you claim as a part of the eight thousand and odd dollars mentioned here in your complaint, the expenses incurred by you in making your own trip from Denver to the mine and back to New York?

A. Yes, sir.

(Testimony of David Taylor.)

Q. Do you include therein your incidental expenses of board and lodging by way and in New York? A. Yes, sir.

Q. What other money had you expended in connection with this deal for any other purpose up to the date that you and Mr. Thane discussed this matter of sending an expert to examine the property? A. I could not tell you exactly, sir.

Q. Well, at any rate, whether your claim is correct or not, or [223—219] whether it is a proper claim or not, you do claim your railroad fare and incidental expenses going from Denver, and back past Denver, though you did not stop at Denver, on to New York?

A. That was included in that amount, yes, sir.

Q. Can you give us approximately the amount that you had expended up to the time that you and Mr. Thane had this talk on the train with regard to this matter?

A. No, sir, I could not, because my expense account of that trip involved the trip, I could not segregate just how much was spent up to each date.

Q. Do you recall what the railroad fares were?

A. No.

Q. Can you tell us whether you spent a hundred dollars, seventy-five dollars, or a hundred and fifty dollars?

A. No, I could not tell you that; I could tell you the expense of general travel involved in this.

(Testimony of David Taylor.)

Q. Give us as nearly as you can the amount of your expenses up to the time that you held this conversation.

A. I could not do it, sir.

Q. You say you have expended in this matter eight thousand dollars, does that include the money that you expended to pay the expenses of Mr. Bancroft? A. Yes.

Q. Was that an item which also included the amount with which you satisfied Mr. Bancroft's interest in the deal of March, 1920? A. No, sir.

Q. Did that include the expenses of your own counsel, and of an auditor in coming from New York? A. You mean the \$8,000?

Q. Yes.

A. Yes, sir. It included the expense, whether it included counsel fees or not, I don't know; I have the details of that in the file here.

Q. Well whatever the amount was that you expended, every cent that [224—220] you now can recall that you expended prior to the time that it was talked over between you and Mr. Thane that an independent examination should be made, was confined, so far as you now know, to your railroad transportation expenses from Denver out to the mine, whatever incidentals you met on the way, and your expenses on the train up to the moment that you and Mr. Thane talked over the transaction? A. Yes, sir.

Q. What other expenses had you incurred in the meantime? A. I do not recollect.

(Testimony of David Taylor.)

Mr. THATCHER.—Can you get the facts?

A. Yes, I can if Mr. Wheeler wants me to.

Mr. WHEELER.—(Q.) Have you the items here?

A. I have them in the file right here.

Q. I think it is an important matter, I should like to have them.

Mr. THATCHER.—I intended to examine the witness on that matter.

WITNESS.—I simply cannot give all these figures from memory.

Mr. WHEELER.—I should like to get at it, if I can get the data.

Mr. THATCHER.—I think we can get it at recess, we will have time to hunt it up then.

Mr. WHEELER.—Very well. (Q.) In your complaint in this case you say, in paragraph 6, that you “laid out and expended for traveling expenses of plaintiff to Lovelock, Nevada, to San Francisco, California, to New York City and to various other places, for assays, for maps, for surveys, for expert services, for mining examinations and for reports, legal fees and an examination of titles and for preliminary work, for the organization of corporations and for telegraph and telephone, a large amount of money, in excess of \$8,000.” Was the amount that you paid out for the organization [225—221] of a corporation, paid out before or after you sent Mr. Bancroft to examine this property; that is to say, before or after May 14th, 1919?

A. I should say part of the expenses were in-

(Testimony of David Taylor.)

volved at the same time Mr. Bayless' trip to Lovelock was, for the purpose of getting information, and he went at the same time Mr. Bancroft did.

Q. You didn't incur any expense, however, until after, or contemporaneously with the request for Mr. Bancroft to visit the property, did you, for the organization of a corporation?

A. Yes, I think I engaged Mr. Jackson to come out here before then, the exact date I don't remember exactly, some time during May.

Q. But Mr. Jackson had not come and had not done anything at that time, had he?

A. He had been engaged to come.

Q. When was he engaged to come?

A. I don't remember exactly.

Q. Will you say that he was engaged to come prior to the 12th day of May? A. No, sir.

Q. It may have been after the 12th day of May, may it not? A. It may have.

Q. With regard to legal fees and examination of titles, that was incurred after you had determined to send Mr. Bancroft out here, wasn't it. A. The actual work—

Mr. THATCHER.—Do you want to refresh your memory?

WITNESS.—Will you read the question, please. (The reporter reads the question.)

A. I don't remember the exact time.

Mr. THATCHER.—That is shown by a telegram sent to Mr. Bayless by Mr. Thane, in which he

(Testimony of David Taylor.)

directed him to do these things, and the telegram is in evidence.

Mr. WHEELER.—Then it may be understood that the expenses were incurred— [226—222]

Mr. THATCHER.—(Intg.) (Q.) Did Mr. Bayless make more than one trip?

A. Yes, I think he made two; that was the first one that Mr. Bayless made.

Mr. THATCHER.—You want the exact dates of Bayless' trip?

Mr. WHEELER.—I want the exact dates. I don't think the point is at all discussed after the witness had determined to have an independent examination made, he incurred the expenses referred to by him here, with the expenses of traveling to Lovelock and on to New York City, or a portion of the way.

Q. In paragraph 8 of your complaint you allege that "on or about, and between the 18th and 25th days of May, plaintiff informed the defendants, Nenzel, Poole, Friedman, Jones, Murrish, Hinch, Huntington, Goodin, Twigg and Lena J. Friedman, that he was ready, able and willing to perform his obligations under the terms of said contract, Exhibit C"; in what manner did you inform them, in writing or orally?

A. I don't remember exactly; I think there was several telegrams to that effect; I think I told Mr. Poole in New York that I expected to go through.

Q. Will you please give me the originals, if you

(Testimony of David Taylor.)

have them, or the copies of any telegrams or letters, **or any document in writing**, which you now say conveyed information to the said defendants that you were ready, able and willing to perform the obligations of your contract.

A. They are probably in the files.

Mr THATCHER.—Just a minute. He asked for the document. We call for the original of certain letters that naturally would be in your possession, I will make a list of those we call for.

Mr. WHEELER.—If you will give a statement of the documents you wish we will produce them, if we have them; we are not aware [227—223] that there are any such documents in any sense of the word.

Mr. THATCHER.—I suggest that we take a five or ten minute recess and let Mr. Taylor come down and help us sort out these papers.

(A short recess is taken at this time.)

(The reporter reads the last question.)

A. The letter of May 20th, which you gave me a few minutes ago goes into the various—

Mr. WHEELER.—(Q.) The letter of May 20, 1919, you say is one of the documents which you referred to when you made your allegation in your bill, which I read a moment ago, just before the recess?

Mr. DAVIS.—(Q.) What exhibit, exhibit 10?

A. Yes.

Mr. WHEELER.—(Q.) Any other letter or document?

(Testimony of David Taylor.)

A. Here is a telegram from me to C. W. Poole, Washington, about some conditions, and telling him that he should be present if the deal is to be closed, and his acknowledgment of it.

Q. You have handed me one document dated May 26th, purporting to be a telegram from David Taylor to C. W. Poole, and a second, dated May 26th, purporting to be a telegram from C. W. Poole to David Taylor; are there any more?

A. There is a telegram from C. W. Poole. (Hands to counsel.)

Q. You have handed me a telegram dated May 26th, addressed to David Taylor and signed by C. W. Poole.

A. There is a telegram to C. W. Poole from B. L. Thane. (Hands to counsel.)

Q. You have handed me a telegram addressed to C. W. Poole, signed B. L. Thane, dated May 29th. Are there any others?

Mr. THATCHER.—We would like to have a letter addressed to Mr. Poole, of date May 28, 1919; a letter on the letter-head of [228—224] the Consolidated Ores Company, addressed personally, Mr. C. W. Poole, care of Nevada Humboldt Tungsten Mines Company, Lovelock, Nevada.

Mr. WHEELER.—(Q.) Counsel has handed me what purports to be a carbon copy of a letter dated May 28th, addressed to C. W. Poole, without any signature; do you recall that is a carbon copy of a letter sent by you? A. Yes, sir.

(Testimony of David Taylor.)

Q. And the original bore your signature?

A. Yes, sir.

Mr. WHEELER.—We will have no objection to the copy being used and I will ask if the letter dated May 28, 1919, is one of the documents referred to by you as being the basis for your allegation which I read just before the recess.

Mr. THATCHER.—We call for a telegram addressed to Mr. Friedman. I cannot give you the exact date, but it is to the effect that the Bancroft report shows tonnage O. K., or something to that effect, and expected to go through with the deal.

A. Telegram from Taylor to Friedman, dated about the 25th, just after the receipt of Bancroft's first telegram as to Tonnage.

Mr. COOKE.—(Q.) Can you state where the telegram was sent, addressed to Friedman at what place?

WITNESS.—I think it was Chicago.

Mr. WHEELER.—(Q.) Have you now given me all of the documents of the character referred to in the several preceding questions?

A. No, sir, I think there are some others.

Q. Where are they and what are they?

A. General telegrams and letters, written back and forth by all the defendants and myself, by which they undoubtedly understood that we expected to go forward with the proposition.

Mr. WHEELER.—I move to strike out the answer as not responsive.

(Testimony of David Taylor.)

The COURT.—That may go out. [229—225]

Mr. THATCHER.—The question is whether there were any other letters or telegrams?

A. Yes, I think there were.

Mr. THATCHER.—I would rather not have all that answer go out; he answered yes, I think there were; then went on; the answer yes, I think there were, should stand.

The COURT.—Any objection?

Mr. WHEELER.—No objection.

Q. Do you know where they are, and what they are?

A. I know the general tenor of them.

Q. I am asking you if you know where they are?

A. No, sir.

Q. What are they, letters or telegrams?

A. I should say both.

Q. But at the present time you cannot give us the whereabouts of any of them? A. No, sir.

Q. Have you them, or copies of them, in your possession or under your control?

A. Whether I have now or not, I don't know; I had a few days ago—a copy of the telegram to Mr. Friedman.

Q. Turning to the document handed to me by you, dated May 30, 1919, addressed to Mr. R. Nenzel, Secretary Nevada Humboldt Tungsten Mines Company, what passage or passages in that letter do you say gave information that you were ready, able and willing to perform your contract?

(Testimony of David Taylor.)

A. I should say the first paragraph suggests that.

Q. The first paragraph; let us hear what you claim.

A. "Will you please take steps to have all bills assembled and on hand within the next week."

Q. What else?

A. The second paragraph: "Will you also please arrange that all the stock up in escrow is forwarded to the Wells Fargo Bank in San Francisco." The third paragraph: "Will you also please have a special meeting of the stockholders called to [230—226] authorize the transfer of all Nevada Humboldt, Tungsten Products and one-half interest in Mill City Development, to a new corporation to be called the 'Nevada Scheelite Company.'" The next paragraph: "My New York attorney is going carefully into the question of size and form of corporation, etc., advisable, and will be ready to discuss these matters with Mr. Murrish in Lovelock at the end of next week." The next paragraph: "If the auditor's report of the books; Bayless' report on the title; and Bancroft's examination checks up with what we expect, Thane and I personally expect to go through with the deal."

Q. What else?

A. The next paragraph: "If there is any possible way in which you can switch the auditors from their Rochester books on to the Nevada Humboldt books and get this out quickly, I should greatly appreciate it, as I would like very much to have the

(Testimony of David Taylor.)

transfer made and the deal closed by the first of June." It seems to me the whole letter covers the matter.

Q. So that there may be no mistake about it, this letter marked Defendants' Exhibit "C," dated May 20, 1919, addressed by you to Mr. R. Nenzel, forms in part the basis for your allegation contained in paragraph 8 of your complaint, as follows: "That plaintiff, on or about, and between the 18th and 25th days of May, informed the defendants, Nenzel, Poole, Friedman, Jones, Murrish, Hinch, Huntington, Goodin, Twigg and Lena J. Friedman, that he was ready, able and willing to perform his obligations under the terms of said contract, Exhibit 'C.' "

A. Yes, sir.

Q. I call your attention to the following paragraph in the letter: "If the auditor's report of the books; Bayless' report on the title; and Bancroft's examination checks up what we expect, Thane and I personally expect to go through with the deal." Was it or was it [231—227] not your expectation to go through with the deal personally with Mr. Thane, if Mr. Bancroft's examination checked up with what you expected?

A. Do you mean personally to put up the money, or temporarily?

Mr. THATCHER.—I object on the ground the question is uncertain as to time.

The COURT.—I think the question is permissible; it certainly refers to the language of the letter. You may answer the question.

(Testimony of David Taylor.)

A. We expected to go through with the deal, whether it was personally, altogether, or with other people's money, was not definitely decided.

Mr. WHEELER.—(Q.) But you expected, if Bancroft's report was favorable, is that it?

A. Yes.

Q. Is it not the fact, Mr. Taylor, that before you had yourself determined to put up any money in this matter for the purpose of paying the creditors of this corporation, you had already determined to have an independent examination made by Mr. Bancroft? A. No.

Q. Is it not the fact that before you put up one cent of money, or intended to put up one cent of money, you arranged to have Mr. Bancroft go to this property, in order that you might see whether or not you could safely put up that money?

A. No, sir.

Q. Are you to be understood as saying that whether Mr. Bancroft reported favorably or unfavorably upon this property, you were expecting to go ahead with it? A. No, sir.

Q. You were then not expecting to go ahead if Mr. Bancroft reported unfavorably?

A. After Mr. Bancroft had gone and was making an examination, if his report was unfavorable I should not have gone ahead with it.

Q. It is the fact then that after arranging to send Mr. Bancroft, [232—228] you for the first time determined that you would go ahead personally

(Testimony of David Taylor.)

with the transaction, and that determination was subsequent to the time that you had arranged to send Mr. Bancroft forward?

A. You will have to repeat the question.

(The reporter reads the question.)

A. No, sir.

Q. Is it not a fact that you never at any time in the course of this transaction reached a point where you had determined that you would put in your own money, until after you had arranged to send Mr. Bancroft to visit the property, and that the putting in of your own money was dependent upon what Mr. Bancroft's report should be?

A. No, sir.

Q. Is it not a fact that you were trying to get money in New York, that you were not expecting to put one cent into this property that you didn't have to put into it; that you didn't know prior to sending Mr. Bancroft out, or arranging to send him, whether or not you were going to be in any way required to put up any money, and that the transactions related by you here as to putting up money, depended upon the report of Mr. Bancroft as to whether or not you should put it up.

Mr. THATCHER.—I object to the form of the question, if the Court please, on the ground it is absolutely unintelligible; that it comprises at least a dozen questions, and that it cannot be answered in its present form; and it is uncertain unintelligible.

The COURT.—We will have the question read,

(Testimony of David Taylor.)

and if the witness understands it, and can answer it, he may do so.

(The reporter reads the question.)

The COURT.—I think that is rather a hard question to answer with a yes or no.

Mr. WHEELER.—I will revise it, your Honor.
[233—229]

Q. Did you ever at any time subsequent to the 14th day of May, have any intention of putting any money into this deal, unless Mr. Howland Bancroft's report should be favorable?

A. I should say that I would not put any money into it if it had been unfavorable.

Q. Read the question, please. See if you can answer it in the form asked.

(The reporter reads the question.)

A. Yes.

Q. When? A. I could not tell you, sir.

Q. Was it after his report came in, or before?

A. Certainly not after his report came in—I say putting any money into this deal, I will change that; putting in \$150,000 in the form of a contract.

Q. Then just what do you mean that you were prepared to put in?

A. I was prepared to put up the money that I offered to do in San Francisco.

Q. \$75,000 and \$10,000?

A. Yes, that was approximately the amount.

Q. On the terms indicated by you in San Francisco. A. Subject to discussion, yes.

Q. Let us see if we can get at an understanding

(Testimony of David Taylor.)

of this. Were you at any time subsequent to the 14th day of May prepared to pay in the amount of money called for by the contract, Exhibit "C," unless Mr. Bancroft's report should prove favorable?

Mr. THATCHER.—Do you understand the question?

WITNESS.—I would like to have it repeated.

(The reporter reads the question.)

A. I am not sure of the exact date of May 14th, when Mr. Bancroft went, I should not have been prepared to put up the full \$150,000, if his report was not favorable. [234—230]

Mr. WHEELER.—(Q.) Did you ever arrange with any person, including yourself, for the loan to the Nevada Humboldt Tungsten Mine Company, the Tungsten Products Company and the Mill City Development Company, of the sum of \$150,000, or any other sum, save upon the condition that Mr. Bancroft's examination of the property should prove favorable?

A. It was never finally arranged, no.

Q. Read the last question and answer.

(The reporter reads the last question and answer.)

WITNESS.—I wish to correct that answer, and say yes.

Q. When?

A. The money was arranged by the—was available by the middle of May.

Q. From whom?

(Testimony of David Taylor.)

A. From myself, Mr. F. M. Taylor, Mr. Brown, and Mr. Thane I considered at that time, later I arranged to take care of Mr. Thane's part.

Q. You never for one moment supposed, did you, that Mr. Thane's subscription was not conditioned upon Mr. Bancroft's report being favorable?

A. Oh, Mr. Thane wanted Mr. Bancroft to go out and examine the mine.

Q. And have you not told us here repeatedly, from the 14th day of May any subscription by you or advanced by you was intended by you to be conditioned upon Mr. Bancroft's favorable report, and that you would not have advanced it if the report was unfavorable?

A. I don't think I mentioned May 14th or any specific date; I am not sure of the dates.

Q. The date on which you telegraphed Mr. Bancroft to go out.

A. After that date I telegraphed Mr. Bancroft to go out, no, we would not have gone ahead without his report being favorable.

Q. Here is what I am getting at: Did you ever put up a dollar on this transaction, and have it arranged to be loaned to any of the corporations named for the purpose of paying their debts, unless Mr. Bancroft's report should be favorable? [235—231]

A. It was put up before it was arranged for Mr. Bancroft to go out, most of it was arranged.

The COURT.—I think counsel is entitled to a categorical answer if it can be given.

(Testimony of David Taylor.)

WITNESS.—I will have to have the question again, please.

(The reporter reads the question.)

A. Yes.

Mr. WHEELER.—(Q.) When?

A. The money was arranged, most of it, the beginning of May, or the middle of May, in New York; some of it was arranged before.

Q. There is no occasion for us to fence any further. A. I am not trying to fence, please.

Q. I want to know if you have ever advanced one dollar, one cent, or any other sum for the specific purpose of loaning it to these corporations under that contract of April the 2d, save upon the condition that Bancroft's report should be favorable? A. Yes.

Q. When? A. Some time the middle of May.

Q. To whom did you offer the money, without any report from Bancroft?

A. It was not offered to anybody; the money was available there, subject to my call and use.

Q. Unconditionally ready to be loaned and advanced, without any report from Bancroft?

A. Before Mr. Bancroft was engaged to go out there, no Mr. Thane's wasn't; my own money was available, my father's money and Mr. Brown's money was available for use according to my judgment.

Q. It is a matter of fact at that time your father had not paid in one cent; Mr. Brown had not told you whether he would pay five or ten thousand dol-

(Testimony of David Taylor.)

lars; you had not made any specific deposit at that time for that purpose, you didn't know where you were going to get the sum, and hoped to get enough in New York; are you now understood [236—232] as saying that the money was ready then unconditionally, without any examination of the property by Bancroft to be loaned to these corporations?

Mr. THATCHER.—I object on the ground the question embodies three or four or five questions, and is argumentative purely, and not cross-examination.

The COURT.—Read the question.

(The reporter reads the question.)

The COURT.—Can you answer that?

WITNESS.—I can answer this, your Honor, the money was always available for my own use any time I wanted to use it, I could supply the money myself at any time, if that is an answer. I am not trying to avoid or equivocate in my answers, I simply can't understand it.

Mr. WHEELER.—I think that I am satisfied with that answer to my question, your Honor.

Q. Did you ever inform the defendants, or any or either of them, that you were ready, able and willing, without any conditions whatsoever other than those expressed in the contract exhibit "C," to make the loans to the corporation referred to in exhibit "C."

A. I think I remember informing Mr. Poole, Mr. Murrish and Mr. Nenzel just after the contract was

(Testimony of David Taylor.)

made; as I remember—may I repeat the conversation as I remember it?

Mr. WHEELER.—I move to strike out the answer as not responsive.

Mr. THATCHER.—No objection.

Mr. WHEELER.—Now read the question, and I ask for a categorical answer.

(The reporter reads the question.)

The COURT.—You may answer that yes or no.

A. Yes.

Mr. WHEELER.—(Q.) When? [237—233]

A. I think it was in my office during the conferences in April, that after this contract was signed I told all of them, or some of them, that I was able to go through with this deal myself if it was necessary, and if I wanted to do so at the time the option expired.

Q. Is that all that you said?

A. I don't remember specifically whether I said anything more or not, that was in the course of the general conversation.

Q. Is it your best recollection that was what was said by you, and all that you said upon the subject?

A. I can't say it is my best recollection. That is all that I remember now.

Q. When you said a moment ago yes in your answer to that question you meant that you had made such an offer, and that it was the offer that you had just recited, did you?

A. It was not an offer, I didn't just say that I made an offer, I said I was able to.

(Testimony of David Taylor.)

Q. Just what did you say, repeat that again please.

A. I said substantially that I was able and could go ahead with the deal and put up the \$150,000 myself if I wanted to at the time the option expired.

Q. And so that was what you called an unconditional offer to carry out the contract, was it?

A. I don't consider that an unconditional offer, no, sir.

Q. I see, then when you said a moment ago you had made an unconditional offer and subsequently defined that as the offer, you didn't really mean that, you meant you had made some other offer, didn't you?

A. I didn't mean to say that I had made an unconditional offer?

Q. Did you ever make any unconditional offer, by that I mean an offer that does not contain other terms or conditions than those expressed in the contract Exhibit "C" to go ahead and carry out the contract [238—234] Exhibit "C."

A. To go through with it and put up the entire amount of money, you mean?

Q. I mean exactly what my question calls for; I think it is plain. Please read it.

(The reporter reads the question.)

A. No.

Q. What is the answer? A. No.

Q. You allege in paragraph 8 "that said sum was pledged by plaintiff and others associated with him in the amount aforesaid, relying upon the

(Testimony of David Taylor.)

representations of the defendant Nenzel, Poole, Friedman, Jones, Murrish, Hinch, Huntington, Goodin, Twigg, and Lena J. Friedman, and the plaintiff communicated said representations to his associates; as a matter of fact Mr. Brown had not said he would subscribe five or ten thousand dollars until you returned from New York, and after you had already arranged to send Mr. Bancroft to the properties, had he? A. No, sir.

Q. And not until after you had informed him that you had arranged to send Mr. Bancroft to the properties, did he? A. I don't remember about that.

Q. And he never did put up any money, and your father didn't put up any money until after the two knew that Bancroft was to report on the properties?

A. He didn't give me the cash no; Mr. Brown never gave me any cash; my father did not give me the actual check until Mr. Bancroft was on his way, or examining the property.

Q. And you thought in your examination that it must have been after you had received Mr. Bancroft's report?

A. I said I didn't know exactly the date I got the check.

Q. And you don't know now but that it was after you had Mr. Bancroft's [239—235] full report?

A. Yes, I knew absolutely it was before I got Mr. Bancroft's report.

Q. Before you had any report from Mr. Bancroft that your father gave you that money?

(Testimony of David Taylor.)

A. It depends on what you mean by report.

Q. Well, telegram in which he told you that he had examined the property.

A. I can tell you that exactly if you will give me the date of the telegram, I know how long it took to get a check to New York, and I know the date the check reached New York.

Q. How many days does it take to get a check to New York from Denver?

A. It takes three nights and two days.

Q. When did you communicate to your father or to Mr. Brown, if ever, the result of Mr. Bancroft's report; by that I mean information which told you that the tonnage was smaller than anticipated, only 40,000 tons?

A. The first time I saw them after I got the information.

Q. When did you see them after you got that information?

A. I could not tell you exactly, I don't remember whether Mr. Brown was out of town for a day or two; my father was there during the entire time; it may have been half an hour or it may have been three hours.

Q. Is it not the fact that you had been informed through a wire from Mr. Bancroft that the tonnage estimated by him was 40,000 before your father put up any money?

A. If you will give me the date that telegram reached Denver I can answer that.

Q. You refer to the telegram, Exhibit "I," dated

(Testimony of David Taylor.)

May 22, "required tonnage exposed on at least two sides." A. Yes, that is the telegram I mean.

Q. And that was the required tonnage as indicated in your telegram 40,000 tons your telegram to Mr. Bancroft?

A. I didn't send Mr. Bancroft any telegram about 40,000 tons that I know of. [240—236]

Q. Your telegram to Mr. Bancroft told him that 40,000 tons would be satisfactory, or words to that effect, and he answered you, "required tonnage exposed on at least two sides," and he testified this morning—perhaps you did not hear him—that he understood that that referred to the 40,000 tons when he so answered?

A. He received a letter from me, that was in reply to a letter.

Q. You understood that referred to 40,000 tons called for by you, didn't you? A. Yes, sir.

Q. Now that is dated May 22, did your father put up that money before May 22?

A. The date that my father gave me the check I can't tell; the check certainly was not sent to New York until after that; whether my father gave me a check and I kept it five or six days before mailing it, I could not tell you; I have telegraphed to get the date of that check, and I shall probably have it to-morrow.

Q. The date of the deposit you recall about May 31st.

A. It is on the New York Trust Company statement May 31st.

(Testimony of David Taylor.)

Q. And you have no recollection now that you carried your father's check with you for any length of time before sending it on to New York, have you?

A. I am very certain I didn't carry it about with me.

Q. You also are very certain that you promptly sent it to New York, aren't you?

A. I am not certain.

Q. And are you not also very certain that not until after your father had been informed that Mr. Bancroft reported the tonnage of 40,000 tons, he put up that money?

A. I am not very certain, no, sir.

Q. It is your best belief, isn't it, that your father didn't put up that money until after he had been informed by Mr. Bancroft through this wire to you that 40,000 tons were exposed.

A. I haven't any particular belief about it now, as I don't know. [241—237]

Q. What day you say you first learned from Mr. Bancroft the result of his assays, his first report on the assays?

A. In January, you mean, or this last examination?

Q. The last examination.

A. May I look at the diary?

Q. Yes.

(Witness examines diary.)

A. Tuesday, May 27.

Q. Mr. Taylor, a moment ago you said with reference to the 40,000 tons, it was not in a telegram but

(Testimony of David Taylor.)

in a letter, I am now referring to Defendant's Exhibit "G," a telegram from you to Howland Bancroft in which you say, "important get immediate opinion mine no extended examination needed but want your statement that 40,000 tons sure with one point four recoverable."

A. I didn't remember that telegram; the telegram that you read me was in reply to the letter; what is the date of that telegram?

Q. This telegram is dated May 14.

A. That would have been sent from New York in getting Mr. Bancroft to go out to examine the mine, and not have anything to do with the telegram which you read me.

Q. When Mr. Bancroft sent you the telegram in which he said required tonnage exposed two sides, what number of tons did you understand him to refer to?

A. Forty or forty-one thousand the figures that were in the letter which I wrote him, and asked him to wire me as to whether that tonnage was exposed or not; I think it was I asked him to wire me whether there was at least 40,000 tons exposed.

Q. Did you tell your father that you were asking to have a confirmation on 40,000 tons before he should put up his money?

A. I don't remember.

Q. Is it your best belief you did, or that you did not?

A. My father probably saw most of the correspondence. [242—238]

(Testimony of David Taylor.)

Q. Is it your best belief you did, or that you did not?

A. I have not any belief about it, sir; I do not know.

Q. Did you tell your father when he put up the money that its use was conditioned upon a report by Mr. Bancroft that there was at least 40,000 tons exposed? A. Did I tell him so?

Q. Yes. A. No, sir, I don't think I did.

Q. What say? A. I don't think I did.

Q. Why didn't you tell the terms under which *you then* going ahead; you had previously told him you were going ahead, you say, on a proposed tonnage of 60,000; why didn't you tell him when you were going to use his money, that now you were going to go ahead if 40,000 tons were exposed?

A. I don't know; the general matters were under discussion all the time; I don't know whether it was necessary to tell him anything specific, we were talking everything over every day constantly.

Q. Were you going to use your father's money when he had subscribed it on a representation made through you to him that there was 60,000 tons of ore exposed when you had changed your plan and were going to go ahead if there was 40,000 tons exposed?

A. Not without his permission; under changed conditions I would not use his money naturally, if I had made those representations.

Q. Did you get his permission to use his money if 40,000 tons were exposed?

(Testimony of David Taylor.)

A. My impression is I had his permission to use the money if I chose to put my own into it, if I saw fit to go ahead he would go in with twenty-five thousand; that was the final arrangement.

Q. But you had concluded to go in if only 40,000 tons were exposed, according to Mr. Baneroft's report or examination. A. Yes.

Q. So when you finally concluded that you would go in it was not on a basis necessarily of 60,000 tons, but upon a basis of 40,000 tons.

A. Forty thousand tons minimum. [243—239]
(By Mr. COOKE.)

Q. Mr. Taylor, you have stated that you have had no experience in a practical way in the business of mining and in the operation of mines, I believe; is that correct?

A. Yes, sir, with the exception of some carnotite claims.

Q. Such property which is embraced in this case here you have had no experience in the handling, operation and management of that kind of property, have you? A. No, sir.

Q. Isn't it a fact that in the proposed arrangement, the arrangement proposed by you in San Francisco in the early part of June, 1919, that you insisted upon your being named as the manager of the property if that arrangement went through?

A. It seems to me I was to be named as president and the general manager—I mean named as the business manager of the company; the superin-

(Testimony of David Taylor.)

tendency or technical management was to be under Mr. Thane's supervision.

Q. Did you not insist on being named as the managing director?

A. I think I did, yes, either that or president.

Q. Didn't you insist on being named as managing director and also president?

A. I don't remember, sir; I insisted on being the manager, the business manager or head of the combination or the concern.

Q. The document that has been called to your attention which you submitted to the defendants and which was also submitted to the creditors' meeting, that was fully discussed between yourself and Mr. Jackson before it was submitted, was it not; you were familiar with all the terms embraced in that document before it was submitted?

A. Yes, sir.

Q. Did you receive any report from Mr. Bancroft as to the amount of tungsten ore exposed in this property, and its value, prior to the time when you received this report which is dated, I think, [244—240] February 2, 1919? A. No, sir.

Mr. THATCHER.—I object on the ground it is not proper cross-examination; I did not ask this witness anything about any prior report to the report of Mr. Bancroft made in January.

Mr. COOKE.—Well, that is probably true, but I don't understand that I have simply got to repeat every question asked.

(Testimony of David Taylor.)

The COURT.—What is the purpose of going into that now; what does it show?

Mr. COOKE.—Well, I want to find out what the answer of the witness will be in reference to it, and then call his attention to some documents, that is all.

The COURT.—I don't see what particular bearing it can have on the case.

Mr. COOKE.—A question of his knowledge with regard to the property.

The COURT.—Do you want to show by it that he knew those statements that were made to him by the defendants in Colorado were true?

Mr. COOKE.—Well, I want to show it for one reason for the purpose of impeachment.

The COURT.—Well, you can't impeach him on immaterial matter.

Mr. COOKE.—Of course I don't think it is immaterial; your Honor might have a different opinion about it.

The COURT.—I don't see what his knowledge of the mine prior to January 1, has to do with the case, and I don't think he was asked as to his knowledge of the mine prior to that time.

Mr. COOKE.—I will submit it.

The COURT.—I will sustain the objection.

Mr. WHEELER.—I called for some items of account.

Mr. THATCHER.—I will have those in the morning.

(Testimony of David Taylor.)

Mr. COOKE.—(Q.) I show you a letter, a carbon copy of the letter, [245—241] dated May 28, 1919, purporting to be from yourself to Mr. Poole; I believe that has already been shown to you and you have identified it as a carbon copy of a letter sent by you to Mr. Poole? A. Yes, sir.

Mr. COOKE.—We offer the letter in evidence.

Mr. THATCHER.—No objection.

(The letter dated May 28, 1919, is marked Defendants' Exhibit "P.")

Mr. COOKE.—(Q.) In reference to this subscription, or the amount of money that your father was to put up, Mr. Taylor, you testified on yesterday, I think, that at no time was there any discussion between you and him in which any other amount than \$25,000 was mentioned, and that the twenty thousand figure mentioned in a certain telegram was a typographical error.

A. I assumed it was a typographical error; it was an error.

Q. I will ask you if the reference to F. M. Taylor, twenty thousand that he was going to raise in connection with this matter, in this letter I am just handing you, and which you have identified, is that also a typographical error?

A. It is an error; there was never any sum agreed on except twenty-five thousand.

Q. "Mr. Brown has taken 10,000; F. M. Taylor 20,000; leaving me possibly 120,000." The F. M. Taylor 20,000 is also an error there?

A. Yes, sir, it is an error.

(Testimony of David Taylor.)

Q. It should be 25,000? A. Yes, sir.

Q. I think you also stated in your testimony yesterday, Mr. Taylor, that one reason at least for your saying that was a typographical error in the telegram was that Mr. Nenzel had informed you that there was an increase in the indebtedness of \$5,000, which would make the total amount 155,000 which would be required for you to raise, and therefore the subscriptions named by you in the telegram, totaling 150,000, would show it was a typographical error; it should have been [246—242] 25,000, making the sums mentioned 155,000; have I made my question clear? A. Yes, sir.

Q. That is correct, is it?

A. I think I suggested that as a possible explanation.

Q. Do you still believe in that explanation; do you believe that explanation explains?

A. Well, you had better go over it again, I am trying to follow you.

Q. Isn't it true you didn't receive the information from Mr. Nenzel until after you had sent that telegram in which you mentioned that 20,000 subscription?

A. Can you give me the date of that telegram; I can answer it then, sir, that I received that information from Mr. Nenzel—somewhere about the 21st or 22d.

Q. Would you say that it was not after you had sent this wire, in which you mention your father's

(Testimony of David Taylor.)

subscription at 20,000, which you now say is a clerical error?

A. I don't remember the exact day I received and sent those letters.

Q. Mr. Taylor, I show you what purports to be a telegram from you to Mr. C. W. Poole, dated May 26th; state, if you can, whether you sent that?

A. Yes, sir.

Mr. COOKE.—We offer it in evidence.

Mr. THATCHER.—No objection.

(The telegram dated May 26th is marked Defendants' Exhibit "Q.")

Mr. COOKE.—(Q.) In this telegram, Exhibit "Q," you state: "Nenzel now reports indebtedness five thousand more than estimated"; that telegram being dated May 26th; do you know when you received or how you received the report from Mr. Nenzel as to that \$5,000?

A. It is probably in a telegram or letter that I have there.

Q. Can you produce that? A. Yes, sir.

Q. I wish you would do so.

(At 4:40 o'clock P. M., court adjourned until Friday, September 17th, 1920, at 10 o'clock A. M.)
[247—243]

Friday, September 17th, 1920.

Court convened. 10 o'clock A. M.

Cross-examination of Mr. DAVID TAYLOR
Resumed.

Mr. COOKE.—(Q.) Mr. Taylor, along about the middle of May, I will take it from the 15th of May

(Testimony of David Taylor.)

to the 20th of May, 1919, what was the base of indebtedness used by you, of the Nevada Humboldt Tungsten Mines Company, in making your calculations for raising the money that you undertook to raise?

A. Approximately 225,000 — 220,000, of which 70,000 was due to me personally.

Q. That would be 150,000?

A. It was about 150,000, approximately 150,000 net.

Q. Mr. Taylor, I show you what purports to be a telegram from yourself to the Nevada Humboldt Tungsten Mines Company, dated May 25, 1919, and ask you if you will look that over and state whether that is a telegram sent by you to the address named. (Hands to witness.) A. Yes, sir.

Mr. COOKE.—We offer it in evidence.

Mr. THATCHER.—No objection.

(The telegram dated May 25, 1919, is marked Defendants' Exhibit "R.")

Mr. COOKE.—(Q.) I show you a telegram dated May 24, 1919, from R. E. Nenzel, addressed to yourself, 73 Symes Building, Denver, Colorado, and ask you if you received that telegram? A. Yes, sir.

Mr. COOKE.—We offer it in evidence.

(The telegram dated May 24, 1919, is marked Defendants' Exhibit "S.")

Mr. COOKE.—I show you a telegram signed Nevada Humboldt Tungsten Mines Company, addressed to yourself, dated May 26, 1919, and ask if

(Testimony of David Taylor.)

you received that telegram on or about the date that it bears? A. Yes, sir. [248—244]

Mr. COOKE.—We offer it in evidence.

(The telegram dated May 26, 1919, is marked Defendants' Exhibit "T.")

Mr. COOKE.—I think that is all. I understand these telegrams are all deemed to have been read; that is the understanding, is it, Mr. Thatcher?

Mr. THATCHER.—Yes, we can read them all a little later.

Mr. WHEELER.—Have you an itemized account, Mr. Thatcher, prepared by Mr. Taylor?

Mr. THATCHER.—(Q.) Have you the itemized account, Mr. Taylor? A. Yes.

Mr. WHEELER.—I would like to look this over, and take it up later, if I desire to question the witness.

Redirect Examination.

Mr. THATCHER.—(Q.) Mr. Taylor, I call your attention to the telegrams just referred to by counsel for defendants, Exhibits "R" and "S" and "T," the correspondence you had with Mr. Nenzel with reference to the indebtedness; did you at that time, or on or about that time, have or receive a statement from the Nevada Humboldt Tungsten Mines Company or from Mr. Nenzel, its secretary?

A. No, not at that time.

Q. How long after that was it you received a statement?

A. I think that statement was given me in their

(Testimony of David Taylor.)

office on April 30th; that was in Lovelock, before I went East.

Q. That was before you went East? A. Yes.

Q. You knew about what it was on April 30th?

A. Knew about what it was; it was given to me by Mr. Nenzel then, stating that it was taken from their books.

Q. About that time, or about May 1st, do you know what the total debts as given to you by the company were; have you any memoranda with [249—245] which to refresh your memory, or any statement?

A. Nothing except that; I think I can tell from that.

Mr. COOKE.—What is that, Mr. Thatcher?

Mr. THATCHER.—I don't know, that is what I am trying to find out; I think it is the statement which was given to Mr. Taylor on or about May 1st.

WITNESS.—Yes, that was a memoranda made by me from such information as they gave me.

Mr. THATCHER.—(Q.) This memorandum?

A. Yes.

Q. Was that made up at the time?

A. Whether it was made up at that time or a little later, I don't know; it was made up within a few days of that time; it would have been.

Q. Calling your attention to the next page of the memoranda, where did you get that?

A. That was given me by Mr. Nenzel.

Q. Do you know whose handwriting that is in; do you know whether it is Mr. Nenzel's or not?

(Testimony of David Taylor.)

A. No, I don't absolutely.

Q. It was given you by Mr. Nenzel?

A. It was given to me by Mr. Nenzel, or somebody in their office.

Q. The typewritten pages that follow, where did you get them?

A. Those were given to me in their office; it was given to me the evening before I left Lovelock to go to New York; all of the typewritten pages were given to me at that time; and that is my own.

Q. That is your own memoranda; that is the recapitulation or summary of the other statements, made by you?

A. Yes; whether the information on that is taken only from these papers, or whether it includes some estimates of mine, I am not sure.

Mr. THATCHER.—We offer it in evidence.

Mr. COOKE.—(Q.) You stated these were delivered to you some time about May 1st?

A. Yes, sir, they were delivered to me on my visit to the Nevada Humboldt Tungsten Mine at Lovelock. [250—246]

Q. As at what date? In view of the fact there appears to be no date on the papers, I ask you this question, on what date do you understand it to be a statement of the indebtedness?

A. I understood it to be a statement up to date, at the time it was given me, whether within one or two days of then, or right up to date, I don't remember; it was supposed to be the approximate condition of the accounts at that time.

(Testimony of David Taylor.)

Q. There is one dated February 28th, in lead pencil? A. That is evidently an older one.

Q. You say that is evidently an older one?

A. Yes. I will change my answer on that; I am not absolutely sure; I think there was a statement given me some time earlier, that I made a lot of figures on; I am very sure that that statement was given me at that time, approximately at that time.

Q. Which statement do you mean was given you at that time, the one you made the figures on?

A. No, that is my own; that statement was made up from figures given me during or about the time of my visit to the mine; whether these were given me then or given me at some previous time, I could not tell; there is a date of February 28th on one of them, and there is a date—I notice here marked ledger balance 331, that ledger balance 331 could not have been given me the 1st of May without my asking for something else.

Q. Then you have no means of knowing positively, outside of those two that have dates upon them, to what dates the balances refer, have you?

A. No, sir, not absolutely.

Mr. COOKE.—We object to the offer on the ground it is not sufficiently authenticated with respect to the time, and for the further reason it includes as a part of the offer the recapitulation or summary by the witness, which he says is made or based in part upon the documents to which it is attached, and in part upon other documents, which are not made a part of the offer. [251—247]

(Testimony of David Taylor.)

Mr. THATCHER.—I withdraw the exhibit.

Mr. THATCHER.—(Q.) Mr. Taylor, under the terms of the contract Exhibit “C” attached to the complaint, the debts of the company are estimated to be \$220,000? A. Yes.

Q. Your testimony here has been directed toward the sum of \$150,000 or the raising of that amount will you state to the Court why that is, and account for the difference?

A. The two hundred and twenty or twenty-five thousand, or whatever it was at April 2d, included under the Nevada Humboldt Mine’s debts an item of about seventy-five or seventy-eight thousand dollars that was due me that I had already advanced them on tungsten concentrates that were in transit, and had not been sold or had not been collected upon at that time; that being taken off of the 223,000 left 145,000 or 150,000 approximately. The other debt was secured by concentrates which were under the ore contract shipped for sale.

The COURT.—(Q.) What other debts do you refer to?

A. The seventy-five or seventy-eight thousand. I had made an ore contract by which I was obligated to advance them a hundred thousand dollars on concentrates as shipped; that contract had nothing to do with the option contract.

Mr. THATCHER.—I move to strike the last answer out as a conclusion of the witness.

Mr. WHEELER.—That was Exhibit “A” annexed to the complaint.

(Testimony of David Taylor.)

The COURT.—That may go out.

Mr. WHEELER.—Let it be understood that your contract was Exhibit “A.”

Mr. THATCHER.—Exhibit “A.” (Q.) An advance of \$75,000 had been made by you under Exhibit “A,” the ore-buying contract? A. Yes.

Q. Can you give me the dates on and after April the 2d of any money advanced on the ore-buying contract, or had it all been advanced prior to that date? [252—248]

A. I think there was more advanced later.

Q. Can you find out?

A. There was a total of \$78,000 advanced altogether.

Q. Can you find out for me how much money was advanced after the 2d day of April on the ore-buying contract?

A. I think there is a statement in the files there.

Mr. WHEELER.—Can you not reach a conclusion and agree with regard to that item? As I understand it, there was a sum of money which the witness later identified, advanced on this purchasing contract, as against concentrates, as provided for in Exhibit “A”; that subsequently, upon selling out and disposing of the concentrates, it was claimed by Mr. Taylor that he did not receive the full amount that he had advanced; accordingly he brought a suit, which we will identify here, against the corporation, a suit which was subsequently settled, and he received from the corporation the bal-

(Testimony of David Taylor.)

ance agreed upon in the settlement as due to him.

Mr. THATCHER.—That is correct.

Mr. WHEELER.—So that under Exhibit “A,” every advance that the witness made has been repaid, and no claim is made that he has not received back everything that he advanced pursuant to that contract.

Mr. THATCHER.—That is true. I want to show how much money was advanced under that ore-buying contract, on and after the second day of April.

Q. I will call your attention to a memoranda, and ask you if you can refresh your memory from that memoranda, as to whether any payments were made, or loans or advances made, after April 2d on the ore-buying contract?

A. Yes, there were two advances.

Mr. THATCHER.—Just a moment. Do you want to strike that out?

Mr. COOKE.—No, I just want to know when this memoranda was made.

WITNESS.—I could not tell you, it was made from my books. [253—249]

Q. Was it made recently, or on or about that time? A. It has been made recently.

Q. Do you know who made it?

A. That is my handwriting; that is all my handwriting.

Q. That is, it was made up some considerable time ago, and made from your books, is that correct?

A. I don't remember just when it was made, I

(Testimony of David Taylor.)

think it was, yes; it must have been made from my books or the records in Denver, Consolidated Ores Company records.

Mr. THATCHER.—I don't think there should be any dispute about it, Mr. Cooke; your books should show whether it is true or not.

Q. Will you tell me when the amounts of the advances and the dates after April 2d, on the ore-buying contract, Exhibit "A."

A. Two advances made here, \$10,000, April 17th, and \$18,000, May 10.

Mr. WHEELER.—(Q.) To be clear about that, those advances were made against concentrates, were they, under contract Exhibit "A"?

A. They were made against concentrates under certain modifications.

Q. Under the concentrate contract, Exhibit "A"?

A. With certain modifications, they were made against concentrates.

Mr. THATCHER.—(Q.) The question is, were they made under Exhibit "A," the ore-buying contract? A. Yes.

Mr. WHEELER.—(Q.) And they were repaid subsequently? A. Yes.

Mr. COOKE.—(Q.) And those modifications you refer to are modifications provided for in Exhibit "A," are they not, as a part of the contract?

A. No, sir.

Q. Well, they have nothing to do with Exhibit "C," the contract in this case, the modifications?

A. No.

(Testimony of David Taylor.)

Mr. THATCHER.—(Q.) What you mean by that, Mr. Taylor, then is this: That pursuant to some telegraphic request you advanced the money before the concentrates were delivered or shipped, is that the idea? A. Yes. [254—250]

Q. You agreed to that? A. Yes.

Q. But it was delivered under the provisions of the ore-buying contract, Exhibit "A" attached to your complaint? A. Yes.

Mr. WHEELER.—Perhaps it might be well to know that was a contract, Exhibit "A," that was to continue in existence notwithstanding the failure to comply with the contract Exhibit "B" or Exhibit "C"; it would not expire by limitation on June 16th; it continued.

Mr. THATCHER.—(Q.) Counsel yesterday asked for a number of telegrams and correspondence which took place between yourself and Mr. Thane; I call your attention to a Western Union Telegram, dated May 27th, did you receive that from Mr. Thane? A. Yes, sir.

Mr. THATCHER.—We offer it in evidence, if the Court please.

Mr. WHEELER.—Objected to as immaterial, incompetent and irrelevant, hearsay, *res alias actae*, purporting to be a telegram to Mr. Taylor from Mr. Thane.

Mr. THATCHER.—It is a part of the correspondence which was yesterday introduced in evidence by the defendants upon cross-examination, and clears up the statements made, and is in an-

(Testimony of David Taylor.)

swer to one of the preceding telegrams which were offered in evidence.

Mr. WHEELER.—I do not understand if Mr. Taylor makes a declaration against interest in a telegram, and sends it forward, that the reply of the individual who receives it becomes evidence.

The COURT.—Let me see the reply. (Examines telegram.) It seems to me that objection is good, Mr. Thatcher.

Mr. THATCHER.—Very, well, your Honor; I will check it up a little closer, and call your Honor's attention to it later.

Q. Mr. Taylor, I call your attention to a telegram signed by David Taylor, addressed to B. L. Thane, dated May 22d, and ask you if you sent that telegram? A. Yes.

Q. On cross-examination by counsel you testified with reference to certain Thane correspondence and statements, or those with reference [255—251] to Thane's subscription, is that the telegram with reference to that matter, sent to you by Mr. Thane? (Hands to witness.)

A. This was one sent to Mr. Thane by me with reference to that.

Mr. THATCHER.—We offer this in evidence.

Mr. WHEELER.—While no doubt it is objectionable for the purpose of clearing up a date, and we don't object if it goes in for all purposes.

Mr. THATCHER.—It may go in for all purposes.

The COURT.—Then that will be admitted.

(Telegram from B. L. Thane to David Taylor,

(Testimony of David Taylor.)

dated May 22d, is marked Plaintiff's Exhibit No. 21.)

Mr. THATCHER.—(Q.) Did you receive a reply to that telegram?

A. I think I probably did, yes.

Q. I call your attention to what purports to be a copy of a telegram addressed to David Taylor, Symes Building, and ask you if that is the reply to yours of the 22d, Plaintiff's Exhibit No. 21, sent to Mr. Thane?

A. I should say that probably was.

Q. Do you know whether you received that or not?

A. I received the telegram, yes, whether that is in reply to that particular message or to others.

Mr. THATCHER.—We offer this in evidence, if the Court please.

Mr. WHEELER.—No objection.

(Telegram from B. L. Thane to David Taylor, dated May 23d, 1919, is marked Plaintiff's Exhibit No. 22.)

Mr. WHEELER.—It is the question of interpretation put on this; they claim they show readiness, willingness and ability, we claim they show the direct opposite, unreadiness, unwillingness and inability.

Mr. THATCHER.—(Q.) I call your attention to a telegram sent to the Nevada Humboldt Tungsten Mines Company, dated May 23d, and ask you if you sent that telegram? A. Yes.

Mr. THATCHER.—I offer it in evidence. [256—252]

(Testimony of David Taylor.)

Mr. WHEELER.—No objection.

(Telegram from David Taylor to Nevada Humboldt Tungsten Mines Co., dated May 23d, is marked Plaintiff's Exhibit No. 23.)

Mr. THATCHER.—I call your attention to a telegram sent by you to Mr. Friedman and ask you if you sent that telegram to Mr. Friedman on or about the date therein stated?

Mr. WHEELER.—Any telegram you now present in this series, I think we can admit was sent by the person it purports to be signed by, and was received by the person to whom it was addressed. That will help us along a little bit. No objection to this.

Mr. THATCHER.—This telegram addressed to L. A. Friedman of date of May 7th: (Reads:) "Think money assured. Hope have funds San Francisco ten days to complete deal."

(Telegram from David Taylor to L. A. Friedman, dated May 7th, is marked Plaintiff's Exhibit No. 24.)

The COURT.—Why not hand them to counsel as long as they admit they were sent and received. (Telegrams are handed to counsel for defendants.)

Mr. WHEELER.—Telegram dated May 29th, addressed to C. W. Poole, signed by B. L. Thane, whatever may be the legal objections to it, the objections are waived.

Mr. THATCHER.—We offer this in evidence, if the Court please, a telegram addressed to Mr. Poole, signed by Mr. Thane, dated May 29th. (Tele-

(Testimony of David Taylor.)

gram from B. L. Thane to C. W. Poole, dated May 29, 1919, is marked Plaintiff's Exhibit No. 25.)

Mr. COOKE.—This telegram of May 26th, 1919, I don't know what number that will be, but we have no objection to that if it is limited to Mr. Poole, the defendant whose name appears upon it.

Mr. THATCHER.—(Q.) Mr. Taylor, I will ask you a question: When the contract of April the 2d was made, there was attached to it and [257—253] delivered to you as part of the original, powers of attorney, was there not? A. Yes, sir.

Q. And did those powers of attorney remain in your possession all of the time? A. Yes.

Q. Were those powers of attorney ever revoked to your knowledge? A. They were not.

Q. Were you ever notified of any revocation of the powers of attorney which were attached to the contract of April the 2d? A. No, sir.

Mr. THATCHER.—We offer it in evidence for all purposes, if the Court please.

Mr. WHEELER.—There was no power of attorney by all of these defendants to Mr. Poole; at least the power of attorney of Mr. Poole would not be broad enough to cover the telegram here in question, and in any aspect the matter could not reach further than Mr. Poole, and those whom he represented under sufficiently broad powers of attorney; so it should be confined to him.

Mr. THATCHER.—I take the position that the powers of attorney are sufficiently broad; that the powers of attorney authorized them—

(Testimony of David Taylor.)

Mr. WHEELER.—They are not powers of attorney to all three parties; they are three several sets of powers of attorney.

Mr. THATCHER.—That is true, and I only ask that be admitted as against Mr. Poole and those whom he represented as powers of attorney.

Mr. WHEELER.—I ask that it be admitted as against Mr. Poole and against those whom he represented by powers of attorney, if upon inspection those powers appear to be sufficiently broad, leaving that matter for argument.

Mr. THATCHER.—That is satisfactory to me.

The COURT.—It is so ordered.

(Telegram from C. W. Poole to David Taylor, dated May 26, 1919, is marked Plaintiff's Exhibit No. 26.) [258—254]

Mr. THATCHER.—(Q.) Mr. Taylor, I call your attention to a memoranda, and ask you if that was prepared by you? A. Yes, sir.

Q. And what is that memoranda, what does it purport to show?

A. It is a memoranda that shows the expenses at which I was specifically put between the dates of April 2d and the middle of June, the date I returned to San Francisco from Denver.

Q. Using that memoranda for the purpose of refreshing your memory, will you state the date, the amount, the character and nature of the expenditures made by you during that time?

Mr. WHEELER.—(Q.) When was the memoranda prepared? A. Prepared this morning.

(Testimony of David Taylor.)

Q. What was it prepared from?

A. Prepared from a detailed statement of expenses, of all expenses involved in this suit, which was prepared some time ago.

Q. Where did you get the detailed statement?

A. From my records and accounts.

Q. Sent on to you, copied by some person?

A. No, the typewritten statement was sent by me to Mr. Thatcher some six or eight months, may be a year ago, I don't remember exactly.

Q. So you made this up from a typewritten statement sent to Mr. Thatcher?

A. Sent to Mr. Thatcher; and made also from memoranda of my own taken from my books just before I left Denver ten days ago.

Q. The essential thing we are after, regardless of any technicality is that a memoranda of expenses you claim to have incurred, and which make up the \$8,000 and upwards, referred to in paragraph six, I think it is, of your complaint.

A. There are some items in that \$8,000, the original paragraph, that were not included in this; what the totals are I don't know.

Mr. THATCHER.—(Q.) Not claimed in your complaint? A. Yes.

Mr. WHEELER.—(Q.) This is the amount which you claim in your [259—255] complaint, is it?

A. Yes.

Q. Regardless of what the footing may be in the complaint, this is the amount which you claim

(Testimony of David Taylor.)

to have been expended after having been induced to enter into this contract? A. Yes, sir.

Mr. WHEELER.—If I am permitted to cross-examine on the items after they go in, we probably will save time to have it go this way. No technical objection is made.

Mr. COOKE.—I would like to inquire if we may not see the statement which you say is in your possession?

Mr. THATCHER.—We didn't have the right to collect some of these items of statement he sent me, and they were stricken out for that reason.

Mr. COOKE.—Is not that statement more complete, giving the dates, etc., than this paper here?

Mr. THATCHER.—I think not.

Mr. WHEELER.—Why not offer your paper in evidence?

Mr. THATCHER.—He has it made up in such a way, he has initials and everything else on it.

Mr. WHEELER.—I am going to thoroughly examine him on each item.

Mr. THATCHER.—I don't doubt it at all. I offer it in evidence, if the Court please.

The COURT.—If there is no objection, it will be admitted.

(The account is marked Plaintiff's Exhibit No. 27)

Mr. THATCHER.—Cross-examine.

(A short recess is taken at this time.)

Cross-examination.

Mr. WHEELER.—(Q.) Referring to Exhibit

(Testimony of David Taylor.)

27, memorandum just offered in evidence, the dates do not appear to be in order; first comes May, then June, then April, then 5/30, 6/30; I suppose that 5/30 is intended to mean the fifth month and the 30th day? A. Yes.

Q. And the 6/10 the sixth month and tenth day?

A. Yes, sir. [260—256]

Q. And that is intended to mean between those dates, the fifth month, thirtieth day and sixth month and tenth day, the items there appearing were expended? A. Yes, sir.

Q. Now is there any item on that account that represents any expenditure made by you prior to your meeting Mr. Thane upon the train on your way to New York in the latter part of April 1919?

A. Yes.

Q. That, I take it, is the item April 25th, followed by 5/23; is that right? A. Yes, part of that item.

Q. I will read the entire item: 5—there is an up and down line—30 and another line, then 6 and a vertical line, 10; that means the fifth month, the thirtieth day; the sixth month, the tenth day. Is that right?

A. Yes, it means between those dates.

Q. Then Dr to S. F. D., 541.82. The meaning of that, I take it, is David Taylor to Lovelock and San Francisco and Denver?

A. It should have been New York.

Q. It should have been NY instead of SF?

A. No, that is the wrong date. That is the expense of 5/30, Lovelock to San Francisco.

(Testimony of David Taylor.)

Mr. WHEELER.—Then I ask that the whole question be withdrawn and stricken from the record.

Q. April 25/5/23; that means between April 25th and May 23d, does it not? A. Yes.

Q. DT Trav EX D-L-NY 653 14. That is the item referred to a moment ago as containing expenses incurred by you representing money paid out by you intermediate the 2d day of April and the time that you met Mr. Thane upon the train; is that right? A. No.

Q. It is right to some extent, is it not?

A. To some extent, yes.

Q. But it also includes additional expenses met by you in New York up to the 23d day of May, does it? A. Yes.

Q. The meaning of that item is David Taylor, traveling expenses, [261—257] Denver and Lovelock and New York, 653.14, is it not? A. Yes, sir.

Q. Is that the only item upon this account which represents expenses as incurred by you prior to meeting Mr. Thane upon the train on the trip to New York in the latter part of April, 1919?

A. Yes, sir.

Q. Now will you be good enough to divide this item of 653.14, giving as nearly as you can the portion of it that you had incurred prior to your talk with Mr. Thane on the train, about sending Mr. Bancroft to the property, and the 2d day of April segregating that from expenses incurred thereafter? A. I could not possibly do that.

(Testimony of David Taylor.)

Q. Can you not give an approximation?

A. I could not even give an approximation; I don't remember now what sort of a ticket I bought even.

Q. No items on your account?

A. My items were all taken care of in my original expenses account; that is my expense account, my detailed expense account I keep on all my business trips.

Q. What has become of the detailed expense account, would not that show you what you incurred before you and Mr. Thane talked about sending Mr. Bancroft to the property?

A. It would show in a general way, the date of the conversation with Mr. Thane; it would not be an expense account.

Q. However, it would give us the approximate date, along about the 29th or 30th of April?

A. About that.

Q. This item includes your expenses while in New York for a period of twenty-three days after you met Mr. Thane on the train, does it not?

A. Yes.

Q. Do you remember what your average expenses were in New York per day? A. No, sir.

Q. Do you remember approximately what they were, ten or fifteen or twenty dollars a day?

A. No, I haven't any idea; I could tell [262—258] approximately what the hotel expenses would be; there was some entertainment, what that amounted to, the details, I could not give you.

(Testimony of David Taylor.)

Q. Can you give us no approximation of what your New York expenses were. What I am trying to find out, for the sake of the record, is just how much money you spent after you talked to Mr. Thane about sending Mr. Bancroft to visit the property?

A. I could not give you anything but a guess at it, I am sorry.

Q. Well, I would like your best guess on that.

A. Well, you fix a date at which you want the expenses divided, and I will try and divide them, I cannot do anything else.

Q. You have here a total amount, including your railroad fares, your living expenses beginning from the time that you left Denver to go to Lovelock, and back to New York, and in New York twenty-three days, 653.14; how much of that was expended in New York, where you testify you arrived on May 1st?

A. Why I should arbitrarily say that probably 200 to 250 would represent travelling expenses while on the train.

Q. And the balance of it would be the amount expended in New York, and a portion represented as travelling expenses on the train would include your living expenses on the train and incidentals after you talked with Mr. Thane about sending Mr. Bancroft to the property?

A. After I talked with Mr. Thane on the train; I don't remember the exact date of the conversation.

(Testimony of David Taylor.)

Q. So \$250 is your best estimate of what it had cost you up to the time you reached New York?

A. I don't say that, you asked me \$250 traveling expenses on that train; I think I estimated two hundred to two hundred and fifty would be about the cost of transportation and expenses while on the train from Denver to Lovelock to New York, and from New York to Denver.

Q. That is exactly what I intended, but traveling expenses on the [263—259] train includes your eating, I suppose?

A. All expenses on the train, that includes expenses for the entire round trip, that \$250 as estimated.

Q. And that is expressed in the item here?

A. Yes.

Q. So that the \$250 which is estimated, includes a portion, a small portion at least, of the amount expended by you after you had talked with Mr. Thane about sending Mr. Bancroft to the property? A. Yes.

Q. So there may be no mistake on your part, as I want you to understand it clearly, up to the time that you talked with Mr. Thane on the train the only expenses which you sue for here embrace something less than \$250, is that right?

A. Yes, sir.

Q. With reference to the rest of these items, taking the first: T J & B Legal, I suppose that means Mr. Jackson's firm, does it not? A. Yes.

(Testimony of David Taylor.)

Q. That was \$1,000 paid by you in cash on May 16th, I take it? A. Approximately May 16th.

Q. Might it not have been later it was paid?

A. It might have been May 15th, and it might have been May 17th.

Q. It was approximately that date?

A. Yes, before I left New York.

Q. "June 6, Wm. Bayless 400.00." That was Mr. Bayless, the attorney who testified here yesterday, who went to examine the property at Lovelock, and that represents his expenses—or rather went to Lovelock?

A. That represents part of his fee. There is an additional amount payable to Mr. Bayless.

Q. That has not yet been paid? A. No.

The COURT.—Did he fix the date when the Jackson fee was paid?

Mr. WHEELER.—The date here is the 16th day of May; the witness says it was approximately about the date; it may have been the 15th or 17th, but it was paid approximately at that date. The telegram to Bancroft, your Honor, asking him to go to the property was dated May 14th. [264—260]

Q. This item represents an "Additional 600.00 & expenses Service at Mine & S F.," which you say has not been paid?

A. Yes, that item was merely put on account.

Q. And that included expense money which was paid pursuant to the telegram of Mr. Thane, offered in evidence yesterday.

(Testimony of David Taylor.)

A. No, sir, it was paid on account of the general bill; I have not got a detailed bill of general expense account, of what would be fees and what would be expense account.

Q. Then the item "5/30/6/10 DT to L & S F & D 541 82," represents I take it the expenses of yourself and outlays between May 30th and June 10th, 1919, to Lovelock and San Francisco, and back to Denver, is that right?

A. I should say that May 30th date was wrong, because I left Denver, I think I left Denver the 28th or 29th; it represents expenses on that trip.

Q. So instead of reading the fifth month, thirtieth day, it should read the 29th day?

A. It should read to detailed expenses on that trip.

Q. At any rate the expenses in this item were all incurred after you had telegraphed to Mr. Bancroft to visit the property, were they not?

A. Yes.

Q. I take it the item "July 3 T J B & M," on that account is Mr. Jackson's law firm? A. Yes.

Q. Was that amount paid at that time, July 3d?

A. It was.

Q. All for services rendered subsequent to the 14th day of May, on which date you telegraphed to Mr. Bancroft to visit the property, is that right?

A. No, sir.

Q. When were those services rendered?

A. I consulted Mr. Jackson a good deal in my trip to New York, on a great many things; the

(Testimony of David Taylor.)

thousand dollars there and the fifteen hundred there, were payments on account.

Q. You consulted him with regard to your contracts "A" and "B" as well as contract "C"? [265—261]

A. I think I went over all things with him very specifically.

Q. And these items were paid not specifically on exhibit "C," but on account of all three contracts, were they not? A. I could not tell you sir.

Q. At any rate, no payment was made until the date indicated by this item of \$1500; no payment of that item was made earlier than July 3d?

A. No payment of the \$1500 was made; no; if that is what you mean by that item.

Q. That \$1500 item. On "June 19 H.—2d exam expense 297 06," that means, I suppose, Howland Bancroft, second examination, for expenses 297.06, is that right? A. Yes.

Q. That amount you paid to Mr. Bancroft on June 19th, did you, 1919?

A. I probably paid him at that time, yes.

Q. I see "Fee approx 1000.00" and in parenthesis below it, all under this date July 19th, "Total 2350.00 division later"; what is meant by that item?

A. It meant the item for fee paid Mr. Bancroft for both examinations, \$2350; I tried to get the necessary details last night, in fact, to see which amount to charge to the first examination and

(Testimony of David Taylor.)

which to the second; Mr. Bancroft will telegraph me that.

Q. I understood Mr. Bancroft to testify he was interested with you up to March of the present year; at that time he made a settlement with you, and gave up all possible interest in the contracts "A," "B" and "C," and you paid him, or agreed to pay him, a definite amount, is that right?

A. That is right, yes.

Q. So that this does not refer to item paid out by you on June 19, 1919, but represents to the extent of at least \$1,000, an item that has been paid out by you in the present year, March?

A. The date is not detailed; it don't state what date it was paid out, and that payment is an adjustment as of that examination.

Q. The fact of the matter is, you claim Mr. Bancroft was obligated to make the examination without cost, do you not? A. No, sir. [266—262]

Q. You claimed that he was entitled to charge his expenses, but that it was his duty to make a second examination because of his participation under the contract here offered in evidence, did you not?

A. No, sir; the matter was not definitely arranged until March 15th of this year.

Q. You understood, did you, that Mr. Bancroft was interested in the matter up to that time?

A. He was interested.

Q. And when you asked him to come up there

(Testimony of David Taylor.)

you assumed it was pursuant to an obligation to go there and make an examination without a fee, did you? A. No.

Q. There was no such contention made to you?

A. There may have been such contentions made, but not an understanding on my part.

Q. In other words, though you didn't have such an understanding, you tried to get Mr. Bancroft to go out there for nothing? A. No.

Q. What you were trying to do was to get him to go as cheaply as possible?

A. Naturally I was trying to get him to go out there as cheaply as I could.

Q. So you got him to give up his interest in the contract, and go for a thousand dollars?

A. Arranged for his fees as engineer.

Q. \$2300 was approved, that was to be divided between the two trips? A. Yes.

Q. When did you pay him for the first trip?

A. Expenses or fee?

Q. Fee?

A. That was paid about the same time.

Q. March of the present year? A. Yes.

Q. You paid \$2350 March of the present year?

A. Yes.

Q. But there has as yet been no assignment of that item as between professional services rendered in January and February of 1919, and in the month of May of the same year; is that right? A. Yes.

Q. So how much of this is available to matters

(Testimony of David Taylor.)

that occurred long [267—263] prior to April 2d, and how much is available to matters that occurred thereafter, you are not now prepared to say, are you?

A. I can say approximately, because Mr. Bancroft stated yesterday that one trip took about ten days, and the other seven, I just arbitrarily divided it that way on the statement, approximately.

Q. The next item: "July 11 Watts assays 2d ex 206.00"; that, I take it is the item of expense for the assays made pursuant to Mr. Bancroft's report in July, 1911; is that right; or pursuant to Mr. Bancroft's direction?

A. In June, his last examination.

Q. In May and June? A. Yes.

Q. And was paid by you on July 11th?

A. Paid by me approximately that date.

Q. That referred to no expenditures at any time prior to the time that you sent Mr. Bancroft to the property? A. No.

Q. I see an item here "Jackson x," I suppose that was your counsel's expenses, \$500? A. Yes.

Q. What does that represent?

A. Mr. Jackson's expenses, New York to San Francisco and return.

Q. In what month?

A. May and June, 1919.

Q. That was the trip that brought him to San Francisco, on which the interview with the creditors took place? A. Yes.

(Testimony of David Taylor.)

Mr. WHEELER.—I think that covers all of the items. That is all.

Redirect Examination.

Mr. THATCHER.—(Q.) Did you have an agreement with Mr. Jackson at the outset as to his fee?

A. Yes.

Q. What was the amount that you were to pay Mr. Jackson? A. \$5,000.

Q. Was that afterward changed?

A. It was left in abeyance.

Q. And the amount which you have paid is—

A. (Intg.) \$2500.

Q. At the time that was arranged for was there any contemplation [268—264] of the meeting of creditors, and other situations which developed in San Francisco on or about June 2d? A. No.

Q. What did it contemplate, if you know?

A. It contemplated Mr. Jackson going out about the end of May, when I sent for him, going into the title, and looking up the general title, giving advice, and attending to the reorganization of the old companies or the formation of a new one, transferring the assets, and general advice and legal advice in the entire transaction.

Q. I call your attention to the item “Wm. Bayless 400.00”; and “additional 600.00 expenses”; You have never adjusted that matter with Mr. Bayless, have you? A. No, sir.

Q. As a matter of fact, some of those services were rendered at the meeting at San Francisco?

(Testimony of David Taylor.)

A. Yes.

Q. And are included in this? A. Yes.

Q. The \$400 was the only amount you paid Mr. Bayless prior to the meeting of the defendants in San Francisco?

A. That is the only amount I paid; I think that was paid just before I left San Francisco to return to Denver, after the meeting of the creditors and everything else; I am not sure of the exact date, I think it was.

Q. Do you know Mr. W. J. Loring?

A. Yes, sir.

Q. Did you ever discuss your contracts in relation to the defendants at any time with Mr. Loring? A. Yes, sir.

Q. Where?

A. At breakfast in the Belmont Hotel in New York.